



## LODI CITY COUNCIL

Carnegie Forum  
305 West Pine Street, Lodi

## AGENDA – REGULAR MEETING

Date: November 16, 2011

Time: Closed Session 6:00 p.m.  
Regular Meeting 7:00 p.m.

\*and via conference call:  
Sheraton Hotel & Marina,  
1380 Harbor Island Drive,  
San Diego, CA 92101

For information regarding this Agenda please contact:

**Randi Johl, City Clerk**  
**Telephone: (209) 333-6702**

**6:55 p.m. Invocation/Call to Civic Responsibility.** Invocations/Calls may be offered by any of the various religious and non-religious organizations within and around the City of Lodi. These are voluntary offerings of private citizens, to and for the benefit of the Council. The views or beliefs expressed by the Speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the beliefs or views of any speaker.

***NOTE:** All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.*

### **C-1 Call to Order / Roll Call**

### **C-2 Announcement of Closed Session**

- a) Conference with Stephen Schwabauer, City Attorney, and Dean Gualco, Human Resources Manager (Labor Negotiators), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6
- b) Conference with Stephen Schwabauer, City Attorney (Labor Negotiator), Regarding Police Mid-Managers, Lodi Police Officers Association, and Lodi Police Dispatchers Association Pursuant to Government Code §54957.6
- c) Government Code Section 54956.9(b)(c); Exposure to Litigation; Lodi Unified School District v. City of Lodi Regarding Alleged Utility Overcharges

### **C-3 Adjourn to Closed Session**

**NOTE: THE FOLLOWING ITEMS WILL COMMENCE NO SOONER THAN 7:00 P.M.**

### **C-4 Return to Open Session / Disclosure of Action**

#### **A. Call to Order / Roll Call**

#### **B. Presentations – None**

#### **C. Consent Calendar (Reading; Comments by the Public; Council Action)**

- C-1 Receive Register of Claims in the Amount of \$9,199,336.53 (FIN)
- C-2 Approve Minutes (CLK)
  - a) October 19 and November 2, 2011 (Regular Meetings)
  - b) November 1 and 8, 2011 (Shirtsleeve Sessions)
- C-3 Accept Quarterly Report of Purchases Between \$5,000 and \$20,000 (CM)
- C-4 Approve Specifications and Authorize Advertisement for Bids for City of Lodi Facility Painting Project at Various Locations (PW)
- C-5 Approve Specifications and Authorize Advertisement for Bids to Procure Polemount and Padmount Transformers (EUD)

- Res. C-6 Adopt Resolution Approving the Purchase of a Replacement Bucket Truck from Altec Industries, Inc., of Dixon (\$95,405) (EUD)
- Res. C-7 Adopt Resolution Authorizing the City Manager to Execute Purchase Order with Downtown Ford Sales, of Sacramento, for 2011 Ford F550 Truck and Utility Bed (\$88,823.95) (PW)
- C-8 Accept Improvements Under Contract for Kofu Park Community Building Energy Efficiency Project (PW)
- Res. C-9 Adopt Resolution Authorizing the City Manager to Execute Improvement Deferral Agreement for 27 East Locust Street (PW)
- Res. C-10 Adopt Resolution Authorizing the City Manager to Execute Third Supplemental Agreement to Pixley Park Property Exchange Agreement and Improvement Agreement with GFLIP III, L. P., to Provide Time Extension (PW)
- Res. C-11 Adopt Resolution Authorizing the City Manager to Execute Task Order No. 32 with West Yost Associates, of Davis, for Preparation of the City's Report of Waste Discharge (\$33,100) (PW)
- Res. C-12 Adopt Resolution Ratifying Employment Agreement Entered Into Between the City of Lodi and Lawrence R. Rooney (CM)
- Res. C-13 Adopt Resolution Authorizing the City Manager to Amend the Energy Efficiency Financing Program (EUD)
- C-14 Receive Report Regarding Communications Pertaining to the California High-Speed Rail Authority and American Recovery and Reinvestment Act Funding (CLK)
- C-15 Set Public Hearing for December 21, 2011, to Consider Adopting Resolution Setting Pre-Approved Engineering News Record Adjustment Index for Usage-Based and Flat Water Rates (PW)

**D. Comments by the Public on Non-Agenda Items**

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

**E. Comments by the City Council Members on Non-Agenda Items**

**F. Comments by the City Manager on Non-Agenda Items**

**G. Public Hearings**

- G-1 Public Hearing to Consider Unmet Transit Needs in Lodi (PW)
- Res. G-2 Public Hearing to Consider Adopting Resolution Confirming the 2012 Annual Report and Levy of Assessments within the Lodi Tourism Business Improvement District (CM)
- Ord. G-3 Public Hearing to Introduce an Ordinance Establishing a Fee Recovery Schedule for the Lodi Energy Theft Diversion Program (EUD)  
(Introduce)

**H. Communications**

- H-1 Post for Vacancy on the Lodi Animal Advisory Commission (CLK)

**I. Regular Calendar**

- Res. I-1 Adopt Resolution Authorizing the City Manager and Treasurer to Execute Agreements for Remit Plus Software, Merchant Card Services, and Remote Deposit Services with Jack Henry and Associates, Inc., Elavon, Inc., and Farmers & Merchants Bank of Central California and Direct City Manager and Treasurer to Negotiate a Banking Services Contract with Farmers & Merchants Bank (CM)

**J. Ordinances – None**

**K. Adjournment**

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

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Randi Johl  
City Clerk



## **CITY OF LODI COUNCIL COMMUNICATION**

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**AGENDA TITLE:** Receive Register of Claims through October 27, 2011 in the Total Amount of \$9,199,336.53

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Financial Services Manager

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**RECOMMENDED ACTION:** Receive the attached Register of Claims for \$9,199,336.53.

**BACKGROUND INFORMATION:** Attached is the Register of Claims in the amount of \$9,199,336.53 through 10/27/11. Also attached is Payroll in the amount of \$1,227,215.31.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** As per attached report.

\_\_\_\_\_  
Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



Accounts Payable  
Council Report

Page - 1  
Date - 11/02/11  
Amount

As of Thursday	Fund	Name	Amount
10/27/11	00100	General Fund	1,834,770.78
	00120	Vehicle Replacement Fund	21,828.00
	00160	Electric Utility Fund	3,216,986.10
	00161	Utility Outlay Reserve Fund	29,104.84
	00164	Public Benefits Fund	60,762.73
	00170	Waste Water Utility Fund	24,643.74
	00171	Waste Wtr Util-Capital Outlay	13,068.45
	00172	Waste Water Capital Reserve	636,321.29
	00180	Water Utility Fund	10,314.11
	00181	Water Utility-Capital Outlay	1,734,560.56
	00210	Library Fund	10,235.79
	00234	Local Law Enforce Block Grant	3,598.24
	00260	Internal Service/Equip Maint	63,400.52
	00270	Employee Benefits	453,531.64
	00300	General Liabilities	2,559.71
	00310	Worker's Comp Insurance	23,268.73
	00321	Gas Tax-2105,2106,2107	24,048.32
	00325	Measure K Funds	11,216.16
	00326	IMF Storm Facilities	591,636.89
	00338	IMF-Regional Transportation	70,534.11
	00339	Prop.1B-Local Streets & Roads	41.38
	00340	Comm Dev Special Rev Fund	2,355.27
	00347	Parks, Rec & Cultural Services	59,288.20
	00459	H U D	8,691.61
	01211	Capital Outlay/General Fund	94,329.06
	01241	LTF-Pedestrian/Bike	2,447.75
	01250	Dial-a-Ride/Transportation	167,732.00
	01410	Expendable Trust	25,200.11
Sum			9,196,476.09
	00190	Central Plume	2,860.44
Sum			2,860.44
Total Sum			9,199,336.53

## Council Report for Payroll

Page - 1  
Date - 11/02/11

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	10/16/11	00100	General Fund	690,099.06
		00160	Electric Utility Fund	134,854.76
		00161	Utility Outlay Reserve Fund	4,482.15
		00164	Public Benefits Fund	3,783.78
		00170	Waste Water Utility Fund	123,435.59
		00180	Water Utility Fund	855.36
		00210	Library Fund	28,453.30
		00235	LPD-Public Safety Prog AB 1913	923.20
		00260	Internal Service/Equip Maint	16,840.20
		00321	Gas Tax-2105,2106,2107	30,271.76
		00340	Comm Dev Special Rev Fund	22,501.54
		00347	Parks, Rec & Cultural Services	98,488.43
		01250	Dial-a-Ride/Transportation	7,120.05
Pay Period Total:				
Sum				1,162,109.18
Retiree	11/30/11	00100	General Fund	65,106.13
Pay Period Total:				
Sum				65,106.13



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Approve Minutes  
a) October 19, 2011 (Regular Meeting)  
b) November 1, 2011 (Shirtsleeve Session)  
c) November 2, 2011 (Regular Meeting)  
d) November 8, 2011 (Shirtsleeve Session)

**MEETING DATE:** November 16, 2011

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Approve the following minutes as prepared:  
a) October 19, 2011 (Regular Meeting)  
b) November 1, 2011 (Shirtsleeve Session)  
c) November 2, 2011 (Regular Meeting)  
d) November 8, 2011 (Shirtsleeve Session)

**BACKGROUND INFORMATION:** Attached are copies of the subject minutes marked Exhibit A through D, respectively.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** None required.

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Randi Johl  
City Clerk

Attachments

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, OCTOBER 19, 2011**

**C-1    Call to Order / Roll Call**

The City Council Closed Session meeting of October 19, 2011, was called to order by Mayor Johnson at 5:30 p.m.

Present:    Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Absent:    None

Also Present:    City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

**C-2    Announcement of Closed Session**

- a)    Conference with Stephen Schwabauer, City Attorney, and Dean Gualco, Human Resources Manager (Labor Negotiators), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6
- b)    Conference with Stephen Schwabauer, City Attorney (Labor Negotiator), Regarding Police Mid-Managers, Lodi Police Officers Association, and Lodi Police Dispatchers Association Pursuant to Government Code §54957.6

**C-3    Adjourn to Closed Session**

At 5:30 p.m., Mayor Johnson adjourned the meeting to a Closed Session to discuss the above matters. The Closed Session adjourned at 6:40 p.m.

**C-4    Return to Open Session / Disclosure of Action**

At 7:00 p.m., Mayor Johnson reconvened the City Council meeting, and Deputy City Attorney Magdich disclosed the following actions.

Items C-2 (a) and C-2 (b) were discussion only with no reportable action.

**A.    Call to Order / Roll Call**

The Regular City Council meeting of October 19, 2011, was called to order by Mayor Johnson at 7:00 p.m.

Present:    Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Absent:    None

Also Present:    City Manager Bartlam, Deputy City Attorney Magdich, and City Clerk Johl

**B.    Presentations**

**B-1    Sandhill Crane Festival Proclamation**

Mayor Johnson presented a proclamation to Ken Nieland of the Lodi Sandhill Crane Association in celebration of the Sandhill Crane Festival in the City of Lodi.

C. Consent Calendar (Reading; Comments by the Public; Council Action)

Mayor Johnson made a motion, second by Mayor Pro Tempore Mounce, to approve the following items hereinafter set forth, **except those otherwise noted**, in accordance with the report and recommendation of the City Manager.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

C-1 Receive Register of Claims in the Amount of \$8,307,487.22 (FIN)

Claims were approved in the amount of \$8,307,487.22.

C-2 Approve Minutes (CLK)

The minutes of October 4, 2011 (Shirtsleeve Session) were approved as written.

C-3 Approve Plans and Specifications and Authorize Advertisement for Bids for Wastewater Main Rehabilitation Program (Project No. 5) (PW)

Approved the plans and specifications and authorized advertisement for bids for Wastewater Main Rehabilitation Program (Project No. 5).

C-4 Approve Specifications and Authorize Advertisement for Bids for 2011 GrapeLine Bus Stop Improvements (PW)

Approved the specifications and authorized advertisement for bids for 2011 GrapeLine Bus Stop Improvements.

C-5 Approve Request for Proposals and Authorize Advertisement for Contract Services for the Development and Implementation of a Climate Action Plan (CD)

Council Member Nakanishi pulled this item to vote in opposition based on his concern that the law itself is not good for the economy, jobs, and businesses.

Tom Ruemmler spoke in favor of the proposed item, stating the implementation of the plan could be done in a manner that is cost effective and friendly to the environment.

Greg Goehring spoke in opposition to the proposed item based on his concern that the original law is based on faulty science and not in the best interest of the citizens.

Council Member Hansen made a motion, second by Mayor Johnson, to approve request for proposals and authorize advertisement for contract services for the development and implementation of a Climate Action Plan.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: Council Member Nakanishi

Absent: None

C-6 Adopt Resolution Approving Purchase Order to A-Z Bus Sales, of Sacramento, for Installation of Diesel Particulate Filters (\$27,344.90) (PW)

Adopted Resolution No. 2011-157 approving the purchase order to A-Z Bus Sales, of Sacramento, for installation of diesel particulate filters in the amount of \$27,344.90.

C-7 Adopt Resolution Approving the Meter Maintenance Program Agreement, the Metering Equipment Transfer Letter of Agreement, and Bill of Sale with Northern California Power Agency and Authorizing Execution by the City Manager (EUD)

Adopted Resolution No. 2011-158 approving the Meter Maintenance Program Agreement, the Metering Equipment Transfer Letter of Agreement, and Bill of Sale with Northern California Power Agency and authorizing execution by the City Manager.

C-8 Adopt Resolution Approving Agreement with Casey Printing, Inc., of King City, for the Production of Five Issues of the Lodi Community Activity Guide (\$45,323) (PRCS)

Adopted Resolution No. 2011-159 approving the agreement with Casey Printing, Inc., of King City, for the production of five issues of the Lodi Community Activity Guide in the amount of \$45,323.

C-9 Adopt Resolution Authorizing the City Manager to Execute One-Year Extension of Contract with Dominguez Landscape Services, Inc., of Sacramento, for City-Funded Maintenance of Consolidated Landscaped Areas (\$149,742.96) (PW)

Adopted Resolution No. 2011-160 authorizing the City Manager to execute one-year extension of contract with Dominguez Landscape Services, Inc., of Sacramento, for City-funded maintenance of consolidated landscaped areas in the amount of \$149,742.96.

C-10 Adopt Resolution Authorizing the City Manager to Execute Contract Change Order with West Coast Arborists, Inc., of Anaheim, for Tree Trimming Services (\$30,000) (PW)

Adopted Resolution No. 2011-161 authorizing the City Manager to execute contract change order with West Coast Arborists, Inc., of Anaheim, for tree trimming services in the amount of \$30,000.

C-11 Adopt Resolution Authorizing the Lodi Police Department to Participate in a Traffic Initiative Grant Funded by the Office of Traffic Safety and Appropriating Funds (\$130,000) (PD)

Adopted Resolution No. 2011-162 authorizing the Lodi Police Department to participate in a Traffic Initiative Grant funded by the Office of Traffic Safety and appropriating funds in the amount of \$130,000.

C-12 Approve the City of Lodi's Arts Grants Submitted for the 2011/12 Fiscal Year (PRCS)

Approved the City of Lodi's Arts Grants submitted for the 2011/12 Fiscal Year.

C-13 Adopt Resolution Rescinding Resolution 93-30, Thereby Eliminating the Personal Computer Purchase Plan (CM)

Adopted Resolution No. 2011-163 rescinding Resolution 93-30, thereby eliminating the Personal Computer Purchase Plan.

C-14 Adopt Resolution Updating the Policies and Procedures for Customer Credit Security Program in Accordance with the Fair & Accurate Credit Transactions Act of 2003 (CM)

Adopted Resolution No. 2011-164 updating the policies and procedures for Customer Credit Security Program in accordance with the Fair & Accurate Credit Transactions Act of 2003.

C-15 Adopt Resolution Approving Impact Mitigation Fee Program Annual Report for Fiscal Year 2010/11 (PW)

Adopted Resolution No. 2011-165 approving Impact Mitigation Fee Program Annual Report for Fiscal Year 2010/11.

C-16 Receive Report Regarding Communications Pertaining to Assembly Bills 438, 646, 1027, 1220, and 1344; Senate Bills 244, 293, 469, 734 and 922; and the Energy Efficiency and Conservation Block Grant Program (CLK)

Received report regarding communications pertaining to Assembly Bills 438, 646, 1027, 1220, and 1344; Senate Bills 244, 293, 469, 734 and 922; and the Energy Efficiency and Conservation Block Grant Program.

C-17 Set Public Hearing for November 2, 2011, to Consider Adoption of a Resolution Setting the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Development Fees for 2012 (CD)

Set public hearing for November 2, 2011, to consider adoption of a resolution setting the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Development Fees for 2012.

D. Comments by the Public on Non-Agenda Items  
THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES. The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted. Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Francisco Trujillo, representing the Community Partnership for Families, invited the City Council and public to the "Celebration on Central" event to be held at Joe Serna School on November 20, 2011.

Tom Ruemmler spoke in regard to his concerns about the challenges associated with the market and economy and related studies.

Brett Morgan introduced himself as the new judge in Department 15 of the San Joaquin Superior Court.

Anthony Zagaroli spoke in regard to his concerns about the change in the utility bills that reflect due upon receipt in lieu of a specific date.

E. Comments by the City Council Members on Non-Agenda Items

Mayor Johnson thanked staff for its efforts regarding the temporary flag pole installation at the Grape Bowl. At the request of Mayor Johnson, Fire Chief Dan Haverty provided a brief PowerPoint presentation regarding the Emergency Operations Center table top staff training.

Council Member Nakanishi provided an overview of a San Diego Tribune newspaper article that discussed AB 32 and water authority costs.

Mayor Pro Tempore Mounce commended staff on its efforts regarding the installation of a temporary flag pole at the Grape Bowl. She also inquired about a stop sign installation at the intersection of Ham Lane and Harney Lane.

Council Member Hansen commended Public Works staff on its efforts regarding the Mills Avenue construction project.

F. Comments by the City Manager on Non-Agenda Items

None.

G. Public Hearings

G-1 Public Hearing to Introduce an Ordinance Amending Chapter 13.20 - Electrical Service - by Repealing and Reenacting Section 13.20.225, "Schedule NEM - Net Energy Metering Rider," and Section 13.20.227, "Schedule CEM - Co-Energy Metering Rider" (EUD)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Johnson called for the public hearing to consider introduction of an ordinance amending Chapter 13.20 - Electrical Service - by repealing and reenacting Section 13.20.225, "Schedule NEM - Net Energy Metering Rider," and Section 13.20.227, "Schedule CEM - Co-Energy Metering Rider."

Electric Utility Director Elizabeth Kirkley provided a brief overview of the proposed co-energy and net-energy metering ordinance as outlined in the staff report.

In response to Council Member Nakanishi, Ms. Kirkley stated AB 920 required the electric utility to pay for customers that use more based on their renewable system and discussed the true up process.

In response to Council Member Hansen, Ms. Kirkley stated originally utilities were not required to reimburse for excess generation and the ordinance primarily applies to the 17 commercial installation and users.

Mayor Johnson opened and closed the public hearing after receiving no public comment.

Mayor Johnson made a motion, second by Mayor Pro Tempore Mounce, to introduce Ordinance No. 1853 amending Chapter 13.20 - Electrical Service - by repealing and reenacting Section 13.20.225, "Schedule NEM - Net Energy Metering Rider," and Section 13.20.227, "Schedule CEM - Co-Energy Metering Rider."

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor



Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

G-2 Public Hearing to Consider the Planning Commission's Recommendation to Certify the 2010-16 Housing Element and Introduce an Interim Ordinance (CD)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Johnson called for the public hearing to consider the Planning Commission's recommendation to certify the 2010-16 Housing Element and introduce an interim ordinance.

City Manager Bartlam provided a PowerPoint presentation regarding the 2010 Housing Element update. Specific topics of discussion included an overview of the adoption process including public outreach, housing element organization, housing element requirements, housing needs assessment, demographics and trends, housing incomes, unemployment rise, special needs population, regional housing needs assessment and income categories, future housing needs, resources and constraints, site inventory and potentials, strategies, and implementation programs.

In response to Mayor Pro Tempore Mounce, Mr. Bartlam stated the City is required to identify under utilized infill sites by law and the 929 South Cherokee Lane property has two designations and is a split-designation because it is a deep property. Mr. Bartlam stated that particular property could redevelop into a higher density on the street and a lower density in the back.

In response to Council Member Hansen, Mr. Bartlam stated the ability to accommodate is based on state requirements and the City needs to show through a mathematical formula various levels of density and affordability.

In response to Council Member Nakanishi, Mr. Bartlam stated the data comes from the Census, research groups, San Joaquin Council of Governments, and the County. Council Member Nakanishi requested low-income data for the City and County.

Mayor Johnson opened the public hearing to receive public comment.

Andy Jensen spoke in regard to the need to be sensitive when designating privately-owned and -operated property as an under-utilized site.

Mayor Johnson closed the public hearing after receiving no further public comment.

In response to Council Member Hansen, Mr. Bartlam stated the whole exercise is theoretical and not absolute.

Council Member Hansen made a motion, second by Mayor Pro Tempore Mounce, to adopt Resolution No. 2011-166 adopting the 2010-16 Housing Element and to introduce Ordinance No. 1854 amending Lodi Municipal Code Title 17 "Zoning" Chapter 17.57, "General Regulations and Exceptions," by adding Section 17.57.200, "Interim Regulations for Mixed Use Designations."

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

H. Communications

H-1 Post for Expiring Terms on the Lodi Animal Advisory Commission, Senior Citizens Commission, and Site Plan and Architectural Review Committee (CLK)

Mayor Pro Tempore Mounce made a motion, second by Mayor Johnson, to direct the City Clerk to post for the following expiring terms:

Lodi Animal Advisory Commission

Linda Castelanelli, term to expire December 31, 2011

Susan J. Blackston, term to expire December 31, 2011

Senior Citizens Commission

Tracy Williams, term to expire December 31, 2011

Terri Whitmire, term to expire December 31, 2011

Site Plan and Architectural Review Committee

Roger Stafford, term to expire January 1, 2012

Vacancy, term to expire January 1, 2012

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

H-2 Monthly Protocol Account Report (CLK)

Mayor Pro Tempore Mounce made a motion, second by Mayor Johnson, to approve the cumulative Monthly Protocol Account Report through September 30, 2011.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

I. Regular Calendar

I-1 Adopt Resolution Authorizing Recruitments to Staff the City's Water Treatment Plant and Appropriating Funds (\$225,000) (PW)

Public Works Director Wally Sandelin provided a PowerPoint presentation regarding the water treatment plant staffing plan. Specific topics of discussion included operation phases, comparison of staffing, comparison of staff compensation, cost comparison, public- and private-partnership issues, minimum staffing attended, community of Mountain House, and recommendation.

In response to Council Member Hansen, Mr. Sandelin stated the percentage variable for the plant manager cost is based on salary only without benefits and private contractors may have a higher salary with a lesser benefit package.

In response to Mayor Johnson, Mr. Sandelin stated one of the three operators is assigned to laboratory tasks and there would be some crossover although some tests will be performed on-site at the treatment plant versus the White Slough facility.

In response to Mayor Pro Tempore Mounce, Mr. Sandelin stated the water treatment plant is a filtration plant and not a membrane plant.

In response to Mayor Johnson, Mr. Sandelin discussed the "million gallons per day" potential for various plants including Lodi, Yucaipa, Bakersfield, and Mountain House.

In response to Council Member Hansen, Mr. Bartlam stated a warranty issue could be covered in a contract for foreseen circumstances but would be difficult for what is not known.

In response to Mayor Pro Tempore Mounce, Mr. Sandelin stated the \$50,000 figure is for capital maintenance for wells and the \$600,000 is for day-to-day activity.

In response to Mayor Pro Tempore Mounce, Mr. Sandelin confirmed there is no cost savings or increase to rate payers based on the proposals from the City or Veolia.

In response to Mayor Johnson, Mr. Sandelin stated the skill set provided by all of the proposers at the plant would be fairly equal as it is a matter of hiring the right people with the right experience.

Council Member Hansen, Council Member Katzakian, and Mayor Johnson disclosed that they met with representatives of both Veolia and Southwest and toured the Mountain House plant.

Jim Good, representing Veolia, provided an overview of the company and specifically discussed the price differential in the proposals, risk transfer and compliance efforts as shown through data management and work orders, operations on a pall membrane plant, Rio Vista and Discovery Bay plants, and contractor responsibility for compliance and fines.

William Schwartz, representing Southwest, provided an overview of the company and specifically discussed cost savings associated with its proposal, Mountain House facility operations, differences between plant types and operations, staff requirements and tasks, and Rio Vista and Discovery Bay facilities.

In response to Mayor Johnson, Mr. Sandelin stated the City's staffing includes 3.9 people that could be theoretical and the consultant thought the minimum number of staff required was five.

Ed Miller spoke in regard to his concerns about the three proposals, stating the focus should be on the cost delivery only.

Gary Wiman spoke in regard to his concerns about not having a City facility operated by experienced and dedicated City staff.

In response to Council Member Hansen, Mr. Sandelin stated the City's proposal was put together with a conservative approach, some positions may not be filled, and the transition manager would be gone within the second year of operation.

In response to Mayor Pro Tempore Mounce, Mr. Sandelin stated City staff can operate at the same level as Veolia and match the proposal cost.

Discussion ensued amongst the City Council regarding the need to reevaluate and rework all three proposals for cost savings and postponing the decision-making process until additional information can be received.

Mayor Johnson made a motion, second by Council Member Hansen, to continue the matter to a future City Council meeting to allow staff and the City Manager time to reevaluate the various proposals for the staffing of the new water treatment plant.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, and Mayor Johnson

Noes: Council Member Nakanishi, and Mayor Pro Tempore Mounce

Absent: None

J. Ordinances

J-1 Adopt Ordinance No. 1852 Entitled, "An Ordinance of the Lodi City Council Amending Lodi (Adopt) Municipal Code Chapter 16.40 - Reimbursements for Construction - by Repealing and Reenacting Section 16.40.050, "Reimbursement Agreements," In Its Entirety" (CLK)

Mayor Johnson made a motion, second by Mayor Pro Tempore Mounce, (following reading of the title) to waive reading of the ordinance in full and adopt and order to print Ordinance No. 1852 entitled, "An Ordinance of the Lodi City Council Amending Lodi Municipal Code Chapter 16.40 - Reimbursements for Construction - by Repealing and Reenacting Section 16.40.050, "Reimbursement Agreements," In Its Entirety," which was introduced at a regular meeting of the Lodi City Council held October 5, 2011.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

K. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 10:58 p.m.

ATTEST:

Randi Johl  
City Clerk

**LODI CITY COUNCIL  
SHIRTSLEEVE SESSION  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, NOVEMBER 1, 2011**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, November 1, 2011, commencing at 7:00 a.m.

Present: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 First Quarter Fiscal Year 2011/12 Water, Wastewater, and Electric Utility Department Financial Reports (CM)

City Manager Rad Bartlam briefly introduced the subject matter of the quarterly updates.

Deputy Public Works Director Charlie Swimley provided a PowerPoint presentation regarding the water and wastewater fiscal year 2012 quarterly update. Specific topics of discussion included the water and wastewater cash flow summary, operating results, cash balances, bad debt write off, and accomplishments.

In response to Mayor Johnson, Mr. Swimley stated the difference in cash days in both the water and wastewater funds is due to starting with a larger amount of money in the water fund, which will be spent in the next phase of the water meter program.

In response to Council Member Hansen, Mr. Bartlam stated the cash on hand goal for all three utilities is 25% of the operating reserve and 181 days is approximately 50%.

In response to Mayor Pro Tempore Mounce, Deputy City Manager Jordan Ayers stated the debt service includes the County's process associated with accruing interest in one year and reversing in the next year, which also includes the cash to accrual numbers.

In response to Mayor Johnson, Mr. Swimley stated the sanitary sewer overflow spills were reduced because staff set a goal of zero spills and intentionally focused on a clean strategy in targeted areas.

In response to Council Member Nakanishi, Mr. Swimley stated the City has an every other year infrastructure replacement program of \$2 million, which replaces approximately two to three miles of line.

In response to Council Member Hansen, Mr. Swimley stated staff targets the oldest pipes first for replacement including those in easements and alleys. Mr. Swimley stated in some cases the pipe may be increased by a small amount due to the new material of the pipe, which is one continuous liner without joints and can handle more water.

In response to Council Member Hansen, Mr. Swimley stated the new system is much less prone to leakage.

In response to Council Member Nakanishi, Mr. Swimley stated the City does cross train in water and wastewater and rotate staff. He stated water and wastewater share about 26 staff members and the treatment plant has about 20 staff members.

In response to Mayor Pro Tempore Mounce, Mr. Swimley stated the water line on Flora and Stockton Street was replaced during the improvements but he is not sure about the water meters being moved from the back to the front.

Electric Utility Director Elizabeth Kirkley provided a PowerPoint presentation regarding the electric utility fiscal year 2012 quarterly update. Specific topics of discussion included cash flow summary, operating results, cash balances, power supply costs, power sales, energy cost adjustment (ECA) revenue, billing statistics, bad debt write off, Northern California Power Agency general operating reserve, open position, and accomplishments.

In response to Mayor Johnson, Ms. Kirkley stated General Mills runs its facility when it is making puffed cereal based on when gas is low and staff is working with General Mills to establish communication regarding notifying the City when the plant will be on or off line.

In response to Council Member Hansen, Ms. Kirkley stated filling the existing two vacancies that will work on the substations has been a challenge because of the lack of qualified applicants in the industry at the current time. She stated staff is doing some cross training for emergency situations but there is still a need for qualified applicants and a good trainer.

In response to Mayor Pro Tempore Mounce, Mr. Bartlam stated the City is using contract staff in the interim while the vacant positions are being recruited for.

In response to Mayor Johnson, Mr. Bartlam stated contract staff can only be used for a temporary period due to CalPers requirements on amount of hours that can be worked and there is a need for permanent employees to provide consistency with these positions.

In response to Council Member Nakanishi, Ms. Kirkley stated she assumes that other agencies including PG&E and SMUD are having similar challenges in recruiting for these types of positions.

In response to Council Member Hansen, Ms. Kirkley stated a cooling degree day is based on a formula related to the monthly temperature based on normal averages, geographical area, and what is actually needed to cool a house or business.

In response to Mayor Pro Tempore Mounce, Ms. Kirkley stated it is difficult to compare rates for utilities because the rate may be comprised of different elements including the base rate, user tax, ECA, tiers, and rate class. Mr. Bartlam stated the most accurate comparison is done when a utility bill is provided and analyzed on its own for the various components.

Council Member Nakanishi requested information regarding demographics for bad debt write off for the utilities.

In response to Mayor Johnson, Ms. Kirkley confirmed that the meter reading complaints initially received with the new system have diminished greatly.

In response to Mayor Pro Tempore Mounce, Ms. Kirkley confirmed that the street lights include eight separate grids throughout the City.

In response to Council Member Hansen, Ms. Kirkley stated that, with respect to street light and pole improvements, the additional equipment is replaced only when it is necessary.

In response to Council Member Hansen and Mayor Pro Tempore Mounce, Mr. Ayers stated the Energy Efficiency Community Block Grant program is a one-time program unless it is reauthorized by the federal government. Ms. Kirkley confirmed the electric trash receptacles appear to be working fine.

In response to Council Member Nakanishi, Ms. Kirkley provided a brief overview of the history and application of the energy cost adjustment.

In response to Council Member Hansen, Ms. Kirkley stated staff will be presenting information regarding the power supply to the west at an upcoming Shirtsleeve Session.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:02 a.m.

ATTEST:

Randi Johl  
City Clerk

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, NOVEMBER 2, 2011**

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of November 2, 2011, was called to order by Mayor Johnson at 6:05 p.m.

Present: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

C-2 Announcement of Closed Session

- a) Conference with Stephen Schwabauer, City Attorney, and Dean Gualco, Human Resources Manager (Labor Negotiators), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6
- b) Conference with Stephen Schwabauer, City Attorney (Labor Negotiator), Regarding Police Mid-Managers, Lodi Police Officers Association, and Lodi Police Dispatchers Association Pursuant to Government Code §54957.6

C-3 Adjourn to Closed Session

At 6:05 p.m., Mayor Johnson adjourned the meeting to a Closed Session to discuss the above matters. The Closed Session adjourned at 7:00 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:05 p.m., Mayor Johnson reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items C-2 (a) and C-2 (b) were discussion only with no reportable action.

A. Call to Order / Roll Call

The Regular City Council meeting of November 2, 2011, was called to order by Mayor Johnson at 7:05 p.m.

Present: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Presentations

- B-1 National Homeless Youth Awareness and Runaway Prevention Month Proclamation



Mayor Johnson presented a proclamation to Kathleen Serna-Halliday, representing the Family & Youth Services of San Joaquin County, proclaiming the month of November 2011 as "National Homeless Youth Awareness and Runaway Prevention Month" in the City of Lodi.

**B-2    Presentation of Certificates of Recognition to Local Youth for Meritorious Service to the Lodi Police Department**

Mayor Johnson presented Certificates of Recognition to three local youth for meritorious service to the Lodi Police Department.

**B-3    Presentation by Hospice of San Joaquin Regarding 2011 Tree of Lights**

Julie Wetteland, Lodi Chapter Butterfly Auxiliary President for Hospice of San Joaquin, gave a presentation regarding the 2011 Hospice Tree Lighting in the City of Lodi.

**C.     Consent Calendar (Reading; Comments by the Public; Council Action)**

Mayor Pro Tempore Mounce made a motion, second by Council Member Katzakian, to approve the following items hereinafter set forth in accordance with the report and recommendation of the City Manager.

**VOTE:**

The above motion carried by the following vote:

Ayes:    Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes:    None

Absent: None

**C-1    Receive Register of Claims in the Amount of \$3,491,634.27 (FIN)**

Claims were approved in the amount of \$3,491,634.27.

**C-2    Approve Minutes (CLK)**

The minutes of October 5, 2011 (Regular Meeting), October 11, 2011 (Shirtsleeve Session), October 18, 2011 (Shirtsleeve Session), and October 25, 2011 (Shirtsleeve Session) were approved as written.

**C-3    Accept the Quarterly Investment Report as Required by Government Code Section 53646 and the City of Lodi Investment Policy (CM)**

Accepted the Quarterly Investment Report as required by Government Code Section 53646 and the City of Lodi Investment Policy.

**C-4    Adopt Resolution Approving the City of Lodi Annual Investment Policy and Internal Control Guidelines (CM)**

Adopted Resolution No. 2011-167 approving the City of Lodi Annual Investment Policy and Internal Control Guidelines.

**C-5    Adopt Resolution Approving the Purchase of 6,000 Feet of Insulated Underground Cable to Prysmian Cables and Systems USA, of Lexington, South Carolina (\$60,161.70) (EUD)**

Adopted Resolution No. 2011-168 approving the purchase of 6,000 feet of insulated underground

cable to Prysmian Cables and Systems USA, of Lexington, South Carolina, in the amount of \$60,161.70.

- C-6 Adopt Resolution Approving the Purchase of Padmount Transformers from HEES Enterprises, Inc., of Astoria, Oregon, and CG Power Systems USA Inc., of Washington, Missouri (\$82,419.06) (EUD)

Adopted Resolution No. 2011-169 approving the purchase of padmount transformers from HEES Enterprises, Inc., of Astoria, Oregon, and CG Power Systems USA Inc., of Washington, Missouri, in the amount of \$82,419.06.

- C-7 Adopt Resolution Approving the Third Amended and Restated Northern California Power Agency Metered Subsystem Aggregator Agreement and Authorizing Execution by the City Manager with Administration by the Electric Utility Director (EUD)

Adopted Resolution No. 2011-170 approving the Third Amended and Restated Northern California Power Agency Metered Subsystem Aggregator Agreement and authorizing execution by the City Manager with administration by the Electric Utility Director.

- C-8 Adopt Resolution Extending City of Lodi Participation for Ten Years in the San Joaquin County Abandoned Vehicle Abatement Service Authority Program (PD)

Adopted Resolution No. 2011-171 extending City of Lodi participation for ten years in the San Joaquin County Abandoned Vehicle Abatement Service Authority Program.

- C-9 Approve Amendment to City Council Protocol Manual Section 5.2 (Commission Appointments) to Add Language Regarding Removal Process (CLK)

Approved amendment to City Council Protocol Manual Section 5.2 (Commission Appointments) to add language regarding removal process.

- C-10 Adopt Resolution Disbanding the Community Separator/Greenbelt Task Force and the Grape Bowl Ad Hoc Committee (CLK)

Adopted Resolution No. 2011-172 disbanding the Community Separator/Greenbelt Task Force and the Grape Bowl Ad Hoc Committee.

- C-11 Adopt Resolution Amending the Bylaws for the Lodi Improvement Committee (CD)

Adopted Resolution No. 2011-173 amending the bylaws for the Lodi Improvement Committee.

- C-12 Set Public Hearing for November 16, 2011, to Consider Unmet Transit Needs in Lodi (PW)

Set public hearing for November 16, 2011, to consider unmet transit needs in Lodi.

- D. Comments by the Public on Non-Agenda Items  
THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES. The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted. Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

John Slaughterback spoke in regard to his concern about previous discussions regarding the City's banking services and the need to bring the item back to Council for consideration.

Cheryl Phillips spoke in regard to her concern about the ongoing noise on her property from the soil vapor extraction system. City Attorney Schwabauer stated the State will need to authorize turning the system off and a brief discussion ensued amongst Council and Mr. Bartlam regarding the ability to mitigate the noise.

E. Comments by the City Council Members on Non-Agenda Items

In response to Council Member Nakanishi, Deputy City Manager Jordan Ayers stated from a budgetary perspective and based on consultant opinion the City has a good idea of what the sales tax collection will be at the end of the year although minor adjustments may need to be made due to miscalculations.

Mayor Pro Tempore Mounce stated she will be participating remotely at the next City Council meeting due to her attendance at the League of California Cities meeting.

Council Member Hansen reported on his attendance at the meetings of the San Joaquin Council of Governments and Northern California Power Agency and specifically discussed the State Transportation Improvement Program, funding for the Harney Lane grade separation project and the Lower Sacramento Road widening project, status of Highway 12 improvements, and the San Joaquin Valley blueprint.

F. Comments by the City Manager on Non-Agenda Items

None.

G. Public Hearings

G-1 Public Hearing to Consider Adoption of a Resolution Amending the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Development Fees for 2012 (CD)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Johnson called for the public hearing to consider adoption of a resolution amending the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Development Fees for 2012.

City Manager Rad Bartlam provided a brief overview of the proposed resolution amending the Multi-Species Habitat Conservation and Open Space Plan Development Fees as outlined in the staff report.

In response to Council Member Hansen, Steve Mayo representing San Joaquin Council of Governments, stated the increase is needed to mitigate the costs associated with land acquisition and monitoring the endowments into perpetuity.

In response to Council Member Nakanishi, Mr. Mayo stated he has heard of no objections to the proposed increase.

In response to Mayor Pro Tempore Mounce, Mr. Mayo stated generally land acquisition happens away from City boundaries because they do not want to influence development. Mr. Mayo also provided an overview of where Lodi mitigation land has been acquired including near Acampo

and Highway 12 near the Delta.

Council Member Hansen made a motion, second by Mayor Johnson, to adopt Resolution No. 2011-174 amending the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Development Fees for 2012.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

H. Communications

H-1 Appointments to Lodi Animal Commission and Personnel Board of Review and Post for Remaining Vacancy on the Personnel Board of Review (CLK)

Mayor Pro Tempore Mounce made a motion, second by Mayor Johnson, to make the following appointments and direct the City Clerk to post for remaining vacancy shown below:

APPOINTMENTS:

Lodi Animal Advisory Commission

Rebecca Hernandez, term to expire December 31, 2013

Personnel Board of Review

Ed Miller, term to expire January 1, 2014

Bill Russell, term to expire January 1, 2014

Jim Schweickardt, term to expire January 1, 2014

Floyd Williams, term to expire January 1, 2015

POSTINGS:

Personnel Board of Review

One Vacancy, term to expire January 1, 2015

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

I. Regular Calendar

I-1 Approve Lodi Tourism Business Improvement District 2012 Annual Report, Adopt Resolution of Intention to Levy Annual Assessment, and Set Public Hearing for November 16, 2011, to Consider the Proposed Assessment (CM)

Nancy Beckman provided a PowerPoint presentation regarding the Lodi Tourism Business Improvement District and Visit Lodi. Specific topics of discussion included advertising, marketing and promotions, tradeshow, fam tours, press and media, publications, and 2011-2012 overviews.

In response to Council Member Hansen, Mr. Bartlam stated the directional sign program has not

died and staff is looking at a variety of funding sources.

In response to Council Member Hansen, Ms. Beckman stated she has not heard anything about the Visitors Center moving from the Turner Road location. Ms. Beckman stated Visit Lodi is considering moving downtown and being open extended hours as another visitors center and would not conflict with the existing center on Turner Road.

In response to Mayor Johnson, Ms. Beckman stated City Council participation in fam tours is a welcome suggestion.

Mayor Johnson made a motion, second by Council Member Hansen, to approve the Lodi Tourism Business Improvement District 2012 Annual Report, adopt Resolution No. 2011-175 of Intention to levy annual assessment, and set public hearing for November 16, 2011, to consider the proposed assessment.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

J. Ordinances

J-1 Adopt Ordinance No. 1853 Entitled, "An Ordinance of the Lodi City Council Amending Chapter 13.20 - Electrical Service - by Repealing and Reenacting Section 13.20.225, "Schedule NEM - Net Energy Metering Rider," and Section 13.20.227, "Schedule CEM - Co-Energy Metering Rider" (CLK)

Mayor Pro Tempore Mounce made a motion, second by Council Member Katzakian, (following reading of the title) to waive reading of the ordinance in full and adopt and order to print Ordinance No. 1853 entitled, "An Ordinance of the Lodi City Council Amending Chapter 13.20 - Electrical Service - by Repealing and Reenacting Section 13.20.225, 'Schedule NEM - Net Energy Metering Rider,' and Section 13.20.227, 'Schedule CEM - Co-Energy Metering Rider,'" which was introduced at a regular meeting of the Lodi City Council held October 19, 2011.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

J-2 Adopt Ordinance No. 1854 Entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 17 - Zoning - Chapter 17.57, "General Regulations and Exceptions," by Adding Section 17.57.200, "Interim Regulations for Mixed Use Designations" (CLK)

Mayor Pro Tempore Mounce made a motion, second by Council Member Katzakian, (following reading of the title) to waive reading of the ordinance in full and adopt and order to print Ordinance No. 1854 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 17 - Zoning - Chapter 17.57, 'General Regulations and Exceptions,' by Adding Section 17.57.200, 'Interim Regulations for Mixed Use Designations,'" which was introduced at a regular meeting of the Lodi City Council held October 19, 2011.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Council Member Nakanishi, Mayor Pro Tempore Mounce, and Mayor Johnson

Noes: None

Absent: None

K. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 8:22 p.m.

ATTEST:

Randi Johl  
City Clerk

**LODI CITY COUNCIL  
SHIRTSLEEVE SESSION  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, NOVEMBER 8, 2011**

The November 8, 2011, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled

ATTEST:

Randi Johl  
City Clerk



# CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Accept Quarterly Report of Purchases Between \$5,000 and \$20,000

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Purchasing Technician

**RECOMMENDED ACTION:** Accept Quarterly Report of Purchases between \$5,000 and \$20,000.

**BACKGROUND INFORMATION:** During the third calendar quarter of 2011, the following purchases were awarded. Background information for each purchase is attached as Exhibits A through S.

Exh.	Date	Contractor	Project	Award Amt.
A	6/21/11	Casey Printing	Community Arts Directory, Fall/Winter 2011	\$9,135.80
B	6/30/11	TestAmerica	White Slough WPCF Groundwater Testing	\$9,380.00
C	7/6/11	CDW Government	Electric Inventory	\$11,780.26
D	7/6/11	Logical Design Inc.	IBM Support & Maintenance	\$13,674.11
E	7/6/11	Dell Marketing	Electric Inventory	\$13,384.10
F	6/30/11	Moore Twining Associates Inc.	White Slough WPCF Groundwater Testing	\$5,275.20
G	7/11/11	MuniQuip Inc.	White Slough Wemco Pump Replacement	\$15,090.37
H	6/30/11	Basic Laboratory Inc	White Slough WPCF Groundwater Testing	\$12,432.00
I	7/20/11	General Pacific	Electric Inventory	\$5,033.22
J	7/20/11	Rexel	Electric Inventory	\$10,085.40
K	7/18/11	Adamson Police Products	Duty Ammunition	\$14,223.00
L	7/28/11	Pace Supply Corp.	Reynolds Ranch Phase 2	\$8,543.49
M	8/1/11	HD Supply - Benicia	Electric Inventory	\$6,077.83
N	8/3/11	Jensen Precast	Electric Inventory	\$6,358.33
O	8/16/11	Sierra Chemical	Sodium Hydroxide	\$19,788.87
P	8/23/11	Envelope Products	#9 & #10 Utility Bill Envelopes	\$5,078.91
Q	8/24/11	Pacific Products & Services Inc.	Sign Posting	\$8,118.11
R	9/16/11	Tri-American Inc.	Street Maint./PW Crack Sealing Operations	\$10,667.25
S	9/19/11	HD Supply - Portland	Electric Inventory	\$9,693.20

**FISCAL IMPACT:** Varies by project. All purchases were budgeted in the 2011-2012 Financial Plan.

**FUNDING:** Funding as indicated on Exhibits.

  
Jordan Ayers, Deputy City Manager

JA/sm  
Attachments

**APPROVED:**   
Konradt Bartlam, City Manager



**RECOMMENDATION FOR CONTRACT AWARD**

---

PROJECT NAME:	The City of Lodi-Community Arts Directory/Fall/Winter 2011	
DEPARTMENT:	Division of Arts & Culture/Community Center	
CONTRACTOR	Casey Printing	
AWARD AMOUNT:	\$9,135.80	(Includes estimated postage & estimated taxes)
DATE OF RECOMMENDATION:	June 21, 2011	

---

**BIDS OR PROPOSALS RECEIVED:**

Wesco Printing	\$9,611.00	Complete job, including estimated postage and tax.
Commerce Printing	\$10,554.00	Complete job including estimated postage and tax.
Casey Printing	\$9,135.80	Complete job including estimated postage and tax

**"NO BID" or NO RESPONSE RECEIVED:****BACKGROUND INFORMATION & BASIS FOR AWARD:**

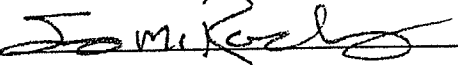
Casey Printing offers printing, binding, duplication, lay-out, delivery to 4 drop centers, estimated postage and estimated taxes at the lowest competitive price and the highest quality.

**FUNDING:**  
345026.7301

345346.11.7301

Prepared by: Diane C. Amaral

Title: Program Coordinator

Reviewed by: 

Purchase Order No.

**EXHIBIT B**

**RECOMMENDATION FOR CONTRACT AWARD**

---

**PROJECT NAME:** White Slough WPCF Groundwater Testing  
**DEPARTMENT:** Public Works  
**CONTRACTOR** TestAmerica  
**AWARD AMOUNT:** \$9,380.00  
**DATE OF RECOMMENDATION:** June 30, 2011

---

**BIDS OR PROPOSALS RECEIVED:**

TestAmerica	\$9,380.00
Basic Laboratory	\$9,730.00
CalTest Analytical Laboratory	\$11,830.00

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

Contract to perform non-volatile synthetic organic chemical testing of samples from the groundwater monitoring wells at the White Slough WPCF. The testing is required to comply with provisions of the City's Effluent and Receiving Waters Characterization Study Work Plan. The study work plan was required by the City's current NPDES for the White Slough WPCF and the results will be part of a submittal that will be used by the Regional Water Quality Control Board to set future waste discharge requirements for the City.

**FUNDING:** 170403.7323

Prepared by: Michael Schafer

Title: Lab/Environ. Comp. Superintendent

Reviewed by: CHS

Purchase Order No.

## RECOMMENDATION FOR CONTRACT AWARD

---

PROJECT NAME: Electric Inventory  
DEPARTMENT: Electric Utility  
CONTRACTOR: CDW Government  
AWARD AMOUNT: \$11,780.26  
DATE OF RECOMMENDATION: 07/06/11

---

**BIDS OR PROPOSALS RECEIVED:**

CDW Government

\$11,780.26

Contract: GSA Schedule GS-35F-0195J

Contract: MARKET

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

This purchase is for the Electric Utility Department. The City of Lodi is using existing contracts for this purchase.

**FUNDING:**

160601.7715

Prepared by: Randy Lipelt

Title: Buyer *WH*

Reviewed by: *[Signature]*

## RECOMMENDATION FOR CONTRACT AWARD

---

PROJECT NAME: IBM Support and Maintenance  
DEPARTMENT: Internal Svcs - ISD  
CONTRACTOR Logical Design Inc  
AWARD AMOUNT: \$13,674.11  
DATE OF RECOMMENDATION: 7/6/11

---

BIDS OR PROPOSALS RECEIVED:  
Logical Design Inc.

\$13,674.11

"NO BID" or NO RESPONSE RECEIVED:

### BACKGROUND INFORMATION & BASIS FOR AWARD:

This is an annual support contract covering hardware and software for the IBM AS400 computer. IBM requires that renewals be purchased through the original vendor, in this case Logical Design Inc.

FUNDING: 100411.7335

Prepared by: Steve Mann

Title: IS Manager

Reviewed by: 

**EXHIBIT E**

**RECOMMENDATION FOR CONTRACT AWARD**

---

**PROJECT NAME:** Electric Inventory  
**DEPARTMENT:** Electric Utility  
**CONTRACTOR** Dell Marketing  
**AWARD AMOUNT:** \$13,384.10  
**DATE OF RECOMMENDATION:** 07/06/11

---

**BIDS OR PROPOSALS RECEIVED:**

Dell Marketing  
Contract: WSCA B27160

\$13,384.10

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

This purchase is for the Electric Utility Department. The City of Lodi is using existing contracts for this purchase.

**FUNDING:**  
**160601.7715**

Prepared by: Randy Lipelt

Title: Buyer *WHL*

Reviewed by: *[Signature]*

Purchase Order No.: 20640

**EXHIBIT F****RECOMMENDATION FOR CONTRACT AWARD**

---

**PROJECT NAME:** White Slough WPCF Groundwater Testing  
**DEPARTMENT:** Public Works  
**CONTRACTOR** Moore Twining Associates Inc.  
**AWARD AMOUNT:** \$5,275.20  
**DATE OF RECOMMENDATION:** June 30, 2011

---

**BIDS OR PROPOSALS RECEIVED:**

Moore Twining Associates Inc.	\$5,275.20
Test America	\$6,748.00
CalTest Analytical Laboratory	\$11,970.00

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

Contract to perform volatile and semi-volatile organic chemical and pesticides and organochlorine pesticides testing of samples from the groundwater monitoring wells at the White Slough WPCF. The testing is required to comply with provisions of the City's Effluent and Receiving Waters Characterization Study Work Plan. The study work plan was required by the City's current NPDES for the White Slough WPCF and the results will be part of a submittal that will be used by the Regional Water Quality Control Board to set future waste discharge requirements for the City.

**FUNDING:** 170403.7323

Prepared by: Michael Schafer

Title: Lab/Environ. Comp. Superintendent

Reviewed by: \_\_\_\_\_

Purchase Order No.

**RECOMMENDATION FOR CONTRACT AWARD**

---

PROJECT NAME: White Slough Wemco Pump Replacement  
DEPARTMENT: Public Works  
CONTRACTOR: MuniQuip Inc.  
AWARD AMOUNT: \$15,090.37  
DATE OF RECOMMENDATION: July 11, 2011

---

BIDS OR PROPOSALS RECEIVED: MuniQuip Inc. \$15,090.37

"NO BID" or NO RESPONSE RECEIVED:

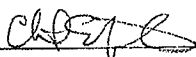
**BACKGROUND INFORMATION & BASIS FOR AWARD:**

No other quotes were pursued as MiniQuip Inc. is the sole supplier for the replacement Wemco Grit Pump. This purchase is for the replacement of a complete pump unit. The Wemco pump is a standardized centrifugal pump used to pump inorganic material known as grit in the treatment process. This unit was installed in 2003 and is one of the two units. This pump has been rebuilt several times but metal fatigue has made replacement necessary to maintain proper grit removal.

FUNDING: 170403.7331

Prepared by: Del Kerlin 

Title: W.T. Superintendent

Reviewed by: 

Purchase Order No.

**RECOMMENDATION FOR CONTRACT AWARD**

---

**PROJECT NAME:** White Slough WPCF Groundwater Testing  
**DEPARTMENT:** Public Works  
**CONTRACTOR** Basic Laboratory Inc.  
**AWARD AMOUNT:** \$12,432.00  
**DATE OF RECOMMENDATION:** June 30, 2011

---

**BIDS OR PROPOSALS RECEIVED:**

Basic Laboratory Inc.	\$12,432.00
Test America	\$13,370.00
CalTest Analytical Laboratory	\$23,618.00

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

Contract to perform metals and inorganic chemical testing of samples from the groundwater monitoring wells at the White Slough WPCF. The testing is required to comply with provisions of the City's Effluent and Receiving Waters Characterization Study Work Plan. The study work plan was required by the City's current NPDES for the White Slough WPCF and the results will be part of a submittal that will be used by the Regional Water Quality Control Board to set future waste discharge requirements for the City.

**FUNDING:** 170403.7323

Prepared by: Michael Schafer

Title: Lab/Environ. Comp. Superintendent

Reviewed by: \_\_\_\_\_

Purchase Order No.



**EXHIBIT I**

**RECOMMENDATION FOR CONTRACT AWARD**

---

PROJECT NAME: Electric Inventory  
DEPARTMENT: Electric Utility  
CONTRACTOR: General Pacific  
AWARD AMOUNT: \$5,033.22  
DATE OF RECOMMENDATION: 07/20/11

---

**BIDS OR PROPOSALS RECEIVED:**

General Pacific	\$5,033.22
GEXPRO	\$6,034.00
Platt Electric Supply	\$5,076.96
HD Supply Portland	\$5,482.32
HD Supply Benicia	\$5,689.20

**"NO BID" or NO RESPONSE RECEIVED:**

All-Phase Electric Supply  
Ace Supply  
Wesco Distribution  
Intraline  
Inertia Engineering  
One Source Distributors

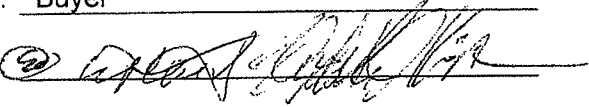
**BACKGROUND INFORMATION & BASIS FOR AWARD:**

This wire is for the Electric Inventory. It will be used in new construction, and also replacement of failed wire in the system. General Pacific is the low responsible bidder and was awarded the Purchase Order.

**FUNDING: 160.1496**

Prepared by: Randy Lipelt

Title: Buyer

Reviewed by: 

Purchase Order No.: 20666

**RECOMMENDATION FOR CONTRACT AWARD**

---

PROJECT NAME: Electric Inventory  
DEPARTMENT: Electric Utility  
CONTRACTOR: Rexel  
AWARD AMOUNT: \$10,085.40  
DATE OF RECOMMENDATION: 07/20/11

---

**BIDS OR PROPOSALS RECEIVED:**

Rexel	\$10,085.40
GEXPRO	\$11,579.89
General Pacific	\$11,075.08
Platt Electric Supply	\$10,213.68
HD Supply Portland	\$12,777.00
HD Supply Benicia	\$13,528.01

**"NO BID" or NO RESPONSE RECEIVED:**

Ace Supply  
Wesco Distribution  
Intraline  
Inertia Engineering  
One Source Distributors

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

This wire is for the Electric Inventory. It will be used in new construction, and also replacement of failed wire in the system. Rexel is the low responsible bidder and was awarded the Purchase Order.

**FUNDING: 160.1496**

Prepared by: Randy Lipelt

Title: Buyer

Reviewed by: 

## RECOMMENDATION FOR CONTRACT AWARD

---

PROJECT NAME: Purchase Duty Ammunition  
DEPARTMENT: Police  
CONTRACTOR: Adamson Police Products  
AWARD AMOUNT: \$14,223.00  
DATE OF RECOMMENDATION: July 18, 2011

---

**BIDS OR PROPOSALS RECEIVED:**

Adamson Police Products  
Hayward

\$14,223.00

**"NO BID" or NO RESPONSE RECEIVED:**

Dooley Enterprizes, Aneheim  
\$14,223.00 plus shipping estimated at \$650.00  
Does not have supply of ammo needed on hand 6 to 8  
week delay

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

the Manufacturer, Winchester, has two authorized dealers in California listed above. The ammunnication is the same cost at each dealer. Adamson has the ammunition on hand and can be picked up by staff with no shipping cost.

Dooley has a delay on the ammo and we would have to pay the shipping and delivery costs.

FUNDING: 101031.7

Prepared by: Jeanie Biskup

Title: Management Analyst

Reviewed by:

**EXHIBIT L**

**RECOMMENDATION FOR CONTRACT AWARD**

---

**PROJECT NAME:** Reynolds Ranch Phase 2  
**DEPARTMENT:** Water Waste Water Deptment  
**CONTRACTOR** Water Deptment  
**AWARD AMOUNT:** \$8,543.49  
**DATE OF RECOMMENDATION:** 7/28/11

---

**BIDS OR PROPOSALS RECEIVED:**

Pace Supply	\$8,543.49
Corix Water Products	\$8,662.78
Ferguson	\$9,002.27

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

This purchas of materials is for Reynolds Ranch phase 2 water taps.

**FUNDING:** 181402.1831.2150

Prepared by: Shawn Tallerico

Title: SR Storekeeper

Reviewed by: 

**EXHIBIT M**

**RECOMMENDATION FOR CONTRACT AWARD**

---

**PROJECT NAME:** Electric Inventory  
**DEPARTMENT:** Electric Utility  
**CONTRACTOR** HD Supply Benicia  
**AWARD AMOUNT:** \$6,077.83  
**DATE OF RECOMMENDATION:** 08/01/11

---

**BIDS OR PROPOSALS RECEIVED:**

HD Supply Benicia	\$6,077.83
One Source Distributors	\$6,178.39
HD Supply Portland	\$6,610.46

**"NO BID" or NO RESPONSE RECEIVED:**

All-Phase Electric Supply  
AZCO  
Wesco Distribution  
Platt Electric Supply  
GEXPRO  
Rexel  
General Pacific


**BACKGROUND INFORMATION & BASIS FOR AWARD:**

These parts are for the Electric Inventory. It will be used in new construction, and also replacement of failed parts in the system. HD Supply Benicia is the low responsible bidder and was awarded the Purchase Order.

**FUNDING: 160.1496**

Prepared by: Randy Lipelt

Title: Buyer

Reviewed by: 

**EXHIBIT N**

**RECOMMENDATION FOR CONTRACT AWARD**

---

**PROJECT NAME:** Electric Inventory  
**DEPARTMENT:** Electric Utility  
**CONTRACTOR** Jensen Precast  
**AWARD AMOUNT:** \$6,358.33  
**DATE OF RECOMMENDATION:** 08/03/11

---

**BIDS OR PROPOSALS RECEIVED:**  
Jensen Precast \$6,358.33

**"NO BID" or NO RESPONSE RECEIVED:**  
Utility Vault Owned by Oldcastle Precast

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

These vaults are for the Electric Inventory. They will be used in new construction at the Surface Water Treatment Plant. Jensen Precast is the low responsible bidder and was awarded the Purchase Order.

**FUNDING: 160.1496**

Prepared by: Randy Lipelt

Title: Buyer

Reviewed by: 

Purchase Order No.: 20730

**RECOMMENDATION FOR CONTRACT AWARD**

---

PROJECT NAME:	Sodium Hydroxide Purchase
DEPARTMENT:	Public Works
CONTRACTOR	Sierra Chemical
AWARD AMOUNT:	\$19,788.87
DATE OF RECOMMENDATION:	August 16, 2011

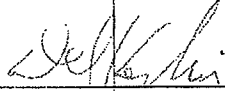
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**BIDS OR PROPOSALS RECEIVED:**

Sierra Chemical	\$19,788.87
Brenntag	\$21,381.91
Univar USA Inc	\$22,000.40

**"NO BID" or NO RESPONSE RECEIVED:****BACKGROUND INFORMATION & BASIS FOR AWARD:**

Sodium Hydroxide, also known as caustic soda, is needed to adjust the pH of the effluent discharged from the White Slough Treatment Facility. The pH is a measure of alkalinity of the water and must be maintained above 6.5 pH units to be in compliance with our discharge limits. Caustic is added on a as needed basis to insure this standard is met.

**FUNDING:** 170403.7355Prepared by: Del Kerlin Title: W,T, SuperintendentReviewed by: 

Purchase Order No.

## RECOMMENDATION FOR CONTRACT AWARD

---

PROJECT NAME: #9 & #10 Utility Bill Envelopes  
DEPARTMENT: Financial Services  
CONTRACTOR: Envelope Products  
AWARD AMOUNT: \$5,078.91  
DATE OF RECOMMENDATION: August 23, 2011

---

**BIDS OR PROPOSALS RECEIVED:**

Envelope Products	\$5,078.91
Pre-Sort Center of Stockton	\$5,492.45
Cenveo	\$5,748.68
Western Printing & Graphics	\$5,920.65

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

Routine purchase of utility bill envelopes.

**FUNDING:** 100505.7301

Prepared by: Sherry Moroz

Title: Purchasing Technician

Reviewed by: \_\_\_\_\_



## RECOMMENDATION FOR CONTRACT AWARD

---

PROJECT NAME: Sign Posting  
DEPARTMENT: Public Works  
CONTRACTOR Pacific Products & Services Inc.  
AWARD AMOUNT: \$8,118.11  
DATE OF RECOMMENDATION: 8/24/11

---

**BIDS OR PROPOSALS RECEIVED:**

Pacific Products & Services Inc.	\$8,118.11
Flint Trading Company	\$8,400.00
Capital Barricade	\$10,362.86

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

The Streets and Drainage Division replaces / installs signs and / or sign posts every year. This purchase is needed to provide the materials necessary to maintain this function over the course of the fiscal year. The basis of the award is low bid.

**FUNDING:** 3215031.7719

Prepared by: Lance Roberts

Title: Water/Wastewater Superintendent

Reviewed by: 

## RECOMMENDATION FOR CONTRACT AWARD

---

PROJECT NAME: Street maint/ Public Works Crack Sealing Operations  
DEPARTMENT: City Of Lodi Streets Dept.  
CONTRACTOR: Tri-American, Inc.  
AWARD AMOUNT: \$10,667.25  
DATE OF RECOMMENDATION: Sept. 16, 2011

---

**BIDS OR PROPOSALS RECEIVED:**

Tri-American, Inc.	\$10,667.25
Environmental Concepts	\$11,378.40
Crafco inc.	\$14,180.00

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

This purchase will replenish the inventory of Roadsaver tack sealant #34543 used to perform crack sealing maintenance within the streets in the City Of Lodi.

Award based on low bid.

**FUNDING:** acct.# 325039.7352

Prepared by: Shawn Tallerico

Title: Sr. Storekeeper

Reviewed by: 

## RECOMMENDATION FOR CONTRACT AWARD

---

PROJECT NAME: Electric Inventory  
DEPARTMENT: Electric Utility  
CONTRACTOR HD Supply-Portland  
AWARD AMOUNT: \$9,693.20  
DATE OF RECOMMENDATION: 09/19/11

---

**BIDS OR PROPOSALS RECEIVED:**

HD Supply Portland  
See additional sheet

\$9,693.20

**"NO BID" or NO RESPONSE RECEIVED:**

WESCO  
Intraline  
GEXPRO  
Platt Electric Supply

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

These parts are for the Electric Inventory. They will be used in new construction, and also replacement of failed parts in the system. HD Supply Portland is the low responsible bidder and was awarded the Purchase Order.

**FUNDING: 160.1496**

Prepared by: Randy Lipelt

Title: Buyer

Reviewed by: 



TM

## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Approve Specifications and Authorize Advertisement for Bids for City of Lodi Facility Painting Project at Various Locations

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Public Works Director

---

**RECOMMENDED ACTION:** Approve specifications and authorize advertisement for bids for City of Lodi facility painting project at various locations.

**BACKGROUND INFORMATION:** This project consists of various painting needs and some minor repair work at various City facilities. Locations include two trailers and the equipment bays located at the Municipal Service Center, Fire Station No. 4, City Hall, and the Carnegie Forum.

The specifications are on file in the Public Works Department. The planned bid opening date is December 14, 2011. The project estimate is under \$100,000.

**FISCAL IMPACT:** This project will prevent further damage to City facilities.

**FUNDING AVAILABLE:** The money for this project will be coming from the Water, Wastewater, Electric Utility and Streets Capital funds. Request for appropriation will be made at contract award.

---

F. Wally Sandelin  
Public Works Director

Prepared by John Munoz, Facilities Supervisor

FWS/JM/pmf

cc: Charlie Swimley, Deputy Public Works Director – Utilities  
Elizabeth Kirkley, Electric Utility Director

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



TM

## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Approve Specifications and Authorize Advertisement of Bids to Procure Polemount and Padmount Transformers

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Electric Utility Director

---

**RECOMMENDED ACTION:** Approve specifications and authorize advertisement of bids to procure polemount and padmount transformers.

**BACKGROUND INFORMATION:** Polemount and padmount transformers are needed in stock to replace damaged/old transformers for distribution system maintenance and new electric service. The inventory was found to be below minimum quantities.

In order to maintain EUD's transformer inventory, staff recommends advertisement for bids as follows:

Polemount:	10 each	25 kVA single-phase conventional 120/240V Secondary
	10 each	37.5 kVA single-phase conventional 120/240V Secondary
Padmount:	10 each	37.5 kVA single-phase 240/120V Secondary
	20 each	50 kVA single-phase 240/120V Secondary
	10 each	75 kVA single-phase 240/120V Secondary

**FISCAL IMPACT:** Estimated cost is \$83,000.

**FUNDING:** Included in FY2011/12 Account Number 160.1496

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Jordan Ayers  
Deputy City Manager/Internal Service Director

---

Elizabeth A. Kirkley  
Electric Utility Director

**PREPARED BY:** Weldat Haile, Senior Power Engineer  
EAK/WH/1st

---

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



TM

# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Approving the Purchase of a Replacement Bucket Truck from Altec Industries Inc., of Dixon (\$95,405)

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Electric Utility Director

**RECOMMENDED ACTION:** Adopt a resolution approving the purchase of a replacement bucket truck from Altec Industries, Inc., of Dixon (\$95,405).

**BACKGROUND INFORMATION:** The new California Air Resources Board (CARB) standards require agencies with diesel vehicles to reduce nitrogen oxides emissions by the end of 2011. The Electric Utility Department (EUD) currently utilizes a 2000 Ford F550 diesel bucket truck (09-023) that does not comply with CARB standards. This vehicle is utilized daily by an electric troubleshooter, the first responder for EUD issues on a 24-hour basis.

The cost to retrofit the vehicle to comply with the new CARB standards is approximately \$20,000. This truck is near the end of its usable life per City Fleet Policy Guidelines. As of September 29, 2011 it had an odometer reading of 87,466 miles. Staff recommends that the truck be replaced rather than retrofit to meet the new CARB standards.

The EUD fleet purchases have been standardized with Altec, and in May 2011 Council approved resolution 2011-72 to award Altec a five-year contract for mandated/required maintenance and parts.

Previous EUD vehicle purchases have been made using California Multiple Award Schedule (CMAS) Contract Number 4-02-23-0013A. Per Lodi Municipal Code §3.20.045 and Fleet Policies and Procedures, the bidding process may be waived when it is advantageous for the City to use contracts that have been awarded by other California public agencies, provided that their award was in compliance with their formally-adopted bidding or negotiation procedures. The current quote from Altec matches the current CMAS price. However, the State of California charges a fee for purchases made through the CMAS contract. Therefore, staff recommends purchasing the vehicle directly from Altec in order to avoid the CMAS fee.

CMAS / ALTEC PRICE	TAX	SUB TOTAL	TRADE-IN	GRAND TOTAL
\$99,683	\$8,722	\$108,405	\$13,000	\$95,405

**FISCAL IMPACT:** Buying a replacement will eliminate the need to retrofit an existing vehicle that is due shortly for replacement.

**FUNDING:** Included in FY2011/12 Vehicle Replacement Fund Account No. 1611201.7851

\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

\_\_\_\_\_  
Elizabeth A. Kirkley  
Electric Utility Director

**PREPARED BY:** Kevin Bell, Rate Analyst  
EAK/KB/BF/1st

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



## MEMORANDUM FOR PURCHASE/DISPOSITION OF VEHICLE

**To:** Fleet Manager  
Deputy City Manager/Internal Services Director  
City Manager

**From:** Electric Utility Fleet Coordinator

**Date:** November 16, 2011

**Subject:** Request for Approval to Purchase Replacement of and Dispose of Surplus Vehicle #09-077

Approval is requested to purchase the replacement for, and complete the disposition of, the following vehicle:

**Year** 2000 **Make** Ford **Model** 550 **Body Type** 2 1/2-Ton Pickup

**Current Assignment** Dept. Electric Division Construction & Maintenance

**City Vehicle No.** 09-077 **Lic. No.** 1064199 **VIN** 1FDAF56F4YED67988

**Current Odometer or Hour Meter Reading** 87,466 **Mileage/Hours** (circle one)

**Replacement Guidelines for this Vehicle** Service Years X Mileage/Hours X

**Additional Information** Purchased through the State of California contract #4-02-23-0013A from Altec Industries, Inc, Dixon, CA at a cost of \$95,405.00.

<b>Cost of Repairs to Date</b>	<b>Cost of Maintenance to Date</b>	<b>Total Cost of Repairs and Maintenance to Date</b>
<u>\$25,472.20</u>	<u>\$3,281.71</u>	<u>\$28,753.91</u>

**Estimated value** (check one)

☐ No value or junk ☐ <\$1,000 ☐ \$1,000-\$3,000 ☒ Other: \$ 13,000

**Planned method of disposition** (check one)

☐ Intra-City Transfer to \_\_\_\_\_ Department, \_\_\_\_\_ Fleet  
☐ Sealed Bid ☐ Off-site Auction ☒ Trade-in ☐ Dismantled, for Parts

(Wrecked vehicles estimated to have only junk value shall be removed from City property by the most economical means.)

**Fund to be credited:** 1611201.7851

\_\_\_\_\_  
Fleet Coordinator

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Fleet Manager

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Deputy City Manager/Internal Servs Dir

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
City Manager

Attachments for signature: ☐ Title ☐ Vehicle/Vessel Transfer Form ☐ Release of Liability  
☐ (Other) \_\_\_\_\_

RESOLUTION NO. 2011-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING  
THE PURCHASE OF ONE (1) BUCKET TRUCK FROM ALTEC  
INDUSTRIES, INC. OF DIXON

=====

WHEREAS, the new California Air Resource Board (CARB) standards require agencies with diesel vehicles to reduce NOx emissions by 2011 at the latest; and

WHEREAS, the Electric Utility Department (EUD) currently utilizes a 2000 Ford F550 diesel bucket truck (09-023) which is not in compliance with CARB standards; and

WHEREAS, this vehicle is utilized daily by an electric troubleshooter, the first responder for EUD issues on a 24 hour basis; and

WHEREAS, the cost to retrofit the vehicle to comply with the new CARB standards is approximately \$20,000; and

WHEREAS, this truck is near the end of its usable life per City Fleet Policy Guidelines, and as of September 29, 2011 it had an odometer reading of 87,466 miles; and

WHEREAS, staff recommends that the truck be replaced rather than retrofit to meet the new CARB standards; and

WHEREAS, the EUD fleet purchases have been standardized with Altec, and in May 2011 council approved Resolution 2011-72 to award Altec a five-year contract for mandated/required maintenance and parts; and

WHEREAS, previous EUD vehicle purchases have been made using California Multiple Award Schedule (CMAS) Contract Number 4-02-23-0013A, and per Lodi Municipal Code §3.20.045 and Fleet Policies and Procedures, the bidding process may be waived when it is advantageous for the City to use contracts that have been awarded by other California public agencies, provided that their award was in compliance with their formally-adopted bidding or negotiation procedures; and

WHEREAS, the current quote from Altec matches the current CMAS price, however, the State of California charges a fee for purchases made through the CMAS contract; and

WHEREAS, staff recommends purchasing the vehicle directly from Altec in order to avoid the CMAS fee.

CMAS / ALTEC PRICE	TAX	SUB TOTAL	TRADE- IN	GRAND TOTAL
\$99,683	8,722	108,405	13,000	\$95,405



NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby awards the bid for the purchase of one (1) bucket truck for the Electric Utility Department to Altec Industries, Inc. of Dixon, California in the amount of \$95,405.

Dated: November 16, 2011

=====

I hereby certify that Resolution No. 2011-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2011, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2011-\_\_\_\_\_



# CITY OF LODI

## COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Purchase Order with Downtown Ford Sales, of Sacramento, for 2011 Ford F550 Truck and Utility Bed (\$88,823.95)

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute purchase order with Downtown Ford Sales, of Sacramento, for 2011 Ford F550 truck and utility bed, in the amount of \$88,823.95.

**BACKGROUND INFORMATION:** Unit No. 04-41, a Chevrolet C60 two-ton utility truck, was purchased in 1966 (Exhibit A). The truck has exceeded the life expectancy for this type of equipment and has become obsolete. Total repair costs for Unit No. 04-041 are \$47,267, with an additional \$3,445 being spent on preventative maintenance.

The Water/Wastewater Division recommends replacing Unit No. 04-41 with a 2011 Ford F550 Super Cab truck chassis that includes a utility bed equipped for construction and repair of underground infrastructure. Staff recommends utilizing State of California Contract No. 1-11-23-20. The total cost of the truck and utility bed is \$88,823.95, including tax. The vehicle being replaced will be disposed of in accordance with City policy.

Per Lodi Municipal Code Section 3.20.045, State and Local Agency Contracts, the bidding process may be waived when it is advantageous for the City, with appropriate approval by City Manager and City Council, to use contracts that have been awarded by other California public agencies, provided that their award was in compliance with their formally-adopted bidding or negotiation procedures.

**FISCAL IMPACT:** Replacement of Unit No. 04-41 will save in repair costs and increase productivity in water and wastewater operations.

<b>FUNDING AVAILABLE:</b>	Water Capital Outlay (1811201):	\$45,000
	Wastewater Capital Outlay (1711201):	<u>\$45,000</u>
	Total:	<u>\$90,000</u>

\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

\_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

Prepared by Charles E. Swimley, Jr., Deputy Public Works Director – Utilities  
FWS/CS/pmf  
cc: Deputy Public Works Director – Utilities

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager







RESOLUTION NO. 2011-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
AUTHORIZING PURCHASE OF 2011 FORD F550  
TRUCK AND UTILITY BED

=====

WHEREAS, Unit No. 04-41, a Chevrolet C60 two-ton utility truck, was purchased in 1966 and has exceeded the life expectancy for this type of equipment; and

WHEREAS, staff recommends replacing Unit No. 04-41 with a 2011 Ford F550 Super Cab truck chassis that includes a utility bed equipped for construction and repair of underground infrastructure; and

WHEREAS, the purchase of the 2011 Ford F550 truck and utility bed would be accomplished utilizing State of California Contract No. 1-11-23-20, in the amount of \$88,823.95; and

WHEREAS, per Lodi Municipal Code Section 3.20.045, State and Local Agency Contracts, the bidding process may be waived when it is advantageous for the City, with appropriate approval by City Manager and City Council, to use contracts that have been awarded by other California public agencies, provided that their award was in compliance with their formally-adopted bidding or negotiation procedures.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the purchase of a 2011 Ford F550 truck and utility bed from Downtown Ford Sales, of Sacramento, California, utilizing State of California Contract No. 1-11-23-20, in the amount of \$88,823.95, including tax; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the purchase order.

Dated: November 16, 2011

=====

I hereby certify that Resolution No. 2011-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2011, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk



# CITY OF LODI

## COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Accept Improvements Under Contract for Kofu Park Community Building Energy Efficiency Project

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Accept improvements under contract for Kofu Park Community Building energy efficiency project.

**BACKGROUND INFORMATION:** The project was awarded to K-4 Construction, of Elk Grove, on October 6, 2010, in the amount of \$29,605. In April 2011, due to problems arising during the construction of the project, the contract with K-4 Construction was terminated and subsequently awarded to the next lowest bidder, Brad Poser Construction, of Lodi. The contract has been completed in substantial conformance with the plans and specifications approved by City Council.

The project consisted of the removal and disposal of the existing baseboard heating units, single-pane windows, kitchenette items, and fluorescent lighting; installation of high-efficiency HVAC unit, dual-pane windows, attic insulation, weather-stripping, T-Bar ceiling system and Energy Star T-8 fluorescent lighting; and other incidental and related work, all as shown on the plans and specifications for the project.

The original contract completion date was January 26, 2011; when the contract was subsequently awarded to Brad Poser Construction, the contract completion date was amended to September 26, 2011. The actual completion date was August 28, 2011. The final contract price was \$30,187.88 (\$10,187.89 to K-4 Construction and \$19,999.99 to Brad Poser Construction). The difference between the contract amount and the final contract price is mainly due to the cost of changing contractors during project construction.

Following acceptance by the City Council, as required by law, the City Engineer will file a Notice of Completion with the County Recorder's office. The notice serves to notify vendors and subcontractors that the project is complete and begins their 30-day period to file a stop notice requiring the City to withhold payments from the prime contractor in the event of a payment dispute.

**FISCAL IMPACT:** There will be a decrease in both the maintenance and the electric usage costs at Kofu Park Community Building.

**FUNDING AVAILABLE:** This project utilized Energy Efficiency Conservation Block Grant (1211722) and Public Benefits (164605.8098) funds.

\_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

FWS/pmf  
cc: Steve Dutra, Parks Superintendent

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Improvement Deferral Agreement for 27 East Locust Street

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Public Works Director

---

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute Improvement Deferral Agreement for 27 East Locust Street.

**BACKGROUND INFORMATION:** Olde Ice House Cellars, LLC (Owner) has submitted a building permit application to allow tenant improvements to an existing building located at 27 East Locust Street. As a condition of the building permit (B11-1089), the construction of public improvements is required.

The required public improvements along Locust Street and Main Street include the installation 125 feet of concrete sidewalks, 120 feet of concrete curb and gutter, a curb return, a commercial driveway, 30 feet of 12-inch storm drain pipe, and the replacement/installation of 2,615 square feet of asphalt concrete (Exhibit A). Owner has requested that the required improvements be deferred due to the extra cost to the project. The improvements are not needed at this time because the improvements would create a lack of continuity throughout Main Street.

Owner has executed an Improvement Deferral Agreement and paid the necessary document preparation and recording fees for the agreement. The agreement also states that the owner agrees to pay for and complete the design and installation of the required improvements on Locust Street and Main Street in accordance with City Standards, including payment of engineering and other applicable City fees, at the time of the widening of Main Street, or at the request of the City, whichever occurs first.

Staff recommends approval of the Improvement Deferral Agreement.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** Property owner funding prior to construction.

---

F. Wally Sandelin  
Public Works Director

Prepared by Chris Boyer, Junior Engineer  
FWS/CRB/pmf  
Attachment  
cc: Senior Civil Engineer Chang  
Olde Ice House Cellars, LLC

---

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

City of Lodi  
Publics Works Department

IMPROVEMENT COST  
ESTIMATE FOR  
IMPROVEMENTS

Development: 27 East Locust Street  
Developer:  
Engineer:

Acres:  
Date: 10/5/11

TOTAL COST OF PROJECT IMPROVEMENTS

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>	<u>Quantity</u>	<u>Total</u>
<b><u>Street System</u></b>							
1	Vertical Curb and Gutter	120	LF	25.00	3,000.00	120	3,000.00
2	Sidewalk <sup>(1)</sup>	1,875	SF	6.00	11,250.00	1,875	11,250.00
3	Curb Return, including Handicap Ramp	1	EA	15,000.00	15,000.00	1	15,000.00
4	Concrete Subgrade Compaction	1,875	SF	3.00	5,625.00	1,875	5,625.00
5	Side Inlet Catch Basin	1	EA	2,272.00	2,272.00	1	2,272.00
6	12" Storm Drain Pipe (RCP)	30	LF	40.00	1,200.00	30	1,200.00
7	Aggregate Base, Class II (0.50')	2,615	SF	0.90	2,353.50	2,615	2,353.50
8	Asphalt Concrete, Type B (0.30')	2,615	SF	2.00	5,230.00	2,615	5,230.00
9	Compact Original Ground (0.50')	2,615	SF	0.20	523.00	2,615	523.00
10	Remove Existing Pavement	2,615	SF	7.00	18,305.00	2,615	18,305.00
11	Street Name Sign & Post	1	EA	511.00	511.00	1	511.00
6	Commercial Driveway (32' wide)	1	EA	3,000.00	3,000.00	1	3,000.00
<b>Subtotal</b>					<b>\$65,269.50</b>	<b>Subtotal</b>	<b>\$68,269.50</b>
Total Construction Cost							\$68,269.50
Engineering & Administration (10% of Construction Costs)							\$6,826.95
Contingencies (10% of Construction Costs)							<u>\$6,826.95</u>
<b>TOTAL COST</b>							<b>A. Total \$81,923.40</b>

1. Assumes replacing sidewalk along Locust Street and Main Street.

WHEN RECORDED, RETURN TO:

City Clerk  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240

IMPROVEMENT DEFERRAL AGREEMENT

27 East Locust Street, Lodi, California  
(APN 043-081-03)

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City" and Olde Ice House Cellars, LLC, a California Limited Liability Company, hereinafter referred to as "Owner".

RECITALS:

Owner is the owner of that certain real property situated in the City of Lodi, County of San Joaquin, known as 27 East Locust Street (APN 043-081-03) and described as follows:

Lots 5 and 6 in Block 22 in the City of Lodi, as per Map filed in Book 2 of Maps and Plats, page 12, San Joaquin County Records.

Building application (B11-1089) has been submitted to allow a tenant improvement to an existing building on the subject property. Installation of public improvements along Locust Street and Main Street are required as a condition of permit issuance in accordance with existing City ordinances and policies regarding off-site improvements as set forth in Title 15, Chapter 15.44 of the Lodi Municipal Code. Required improvements include, but are not limited to, the installation 125-feet of concrete sidewalks, 120-feet of concrete curb, gutter, a curb return, a commercial driveway, 30-feet of 12-inch storm drain pipe and the replacement/installment of 2,615 square feet of asphalt concrete. Owner is desirous of complying with existing City ordinances and policies regarding off-site improvements. Owner has requested that the improvements on Locust Street and Main Street be deferred.

Council of the City will approve the deferral of the required Locust Street and Main Street improvements on condition that the Owner first enters into and execute this agreement with City.

NOW THEREFORE, in order to insure satisfactory performance by Owner of Owner's obligations under said City Code, the parties agree as follows:

1. Owner agrees to pay for and complete the design and installation of the required improvements on Locust Street and Main Street in accordance with City Standards, including payment for engineering and other applicable City fees, at the time of the widening of Main Street, or at the request of the City, whichever occurs first.
2. Owner agrees to undertake the design and construction of the required improvements within 30 days after written notice is given by the City, subject to Item #1 above, and will complete the required improvements within 120 days from the date of notice.



3. This agreement shall run with the land and be binding on the Owner, its heirs, successors or assigns.
4. If Owner fails to complete the required improvements, or make the fee payments as required by Item #1 of this Agreement within the time period specified in Item #2 above, the City shall be entitled, at its election, to either 1) file suit against Owner, its heirs, successors or assigns, for the full value of the improvements at the time period specific in Item #2 above plus attorney fees, or 2) complete the improvements at the expense of Owner, and file suit against Owner, its heirs, successors or assigns for the costs incurred, plus attorney fees. In either case, the City shall be entitled to file a lien against said property for the full value of the improvement costs.
5. A copy of the Agreement shall be recorded in the office of the San Joaquin County Records, P. O. Box 1968, Stockton, California 95201-1968.
6. All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

F. Wally Sandelin  
Public Works Director  
City of Lodi  
P. O. Box 3006  
Lodi, CA 95240-1910

Notices required to be given to Owner shall be addressed as follows:

Olde Ice House Cellars, LLC  
1620 Edgewood Drive  
Lodi, CA 95240

IN WITNESS WHEREOF, the parties hereto have set their hands the day, month and year appearing opposite their names.

CITY OF LODI, a Municipal Corporation


Dated: \_\_\_\_\_ 2011


By: \_\_\_\_\_  
Konradt Bartlam, City Manager

Attest: \_\_\_\_\_  
Randi Johl, City Clerk

Olde Ice House Cellars, LLC, a California  
Limited Liability Company

Dated: 10-6-11 2011

  
*Olde Ice House Cellars LLC*

Approved as to form: \_\_\_\_\_  
D. Stephen Schwabauer  
City Attorney 

Dated: \_\_\_\_\_ 2011

Development: 27 East Locust Street  
Developer:  
Engineer:

Acres:  
Date: 10/5/11

TOTAL COST OF PROJECT IMPROVEMENTS							
<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>	<u>Quantity</u>	<u>Total</u>
<b><u>Street System</u></b>							
1	Vertical Curb and Gutter	120	LF	25.00	3,000.00	120	3,000.00
2	Sidewalk <sup>(1)</sup>	1,875	SF	6.00	11,250.00	1,875	11,250.00
3	Curb Return, including Handicap Ramp	1	EA	15,000.00	15,000.00	1	15,000.00
4	Concrete Subgrade Compaction	1,875	SF	3.00	5,625.00	1,875	5,625.00
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6	12" Storm Drain Pipe (RCP)	30	LF	40.00	1,200.00	30	1,200.00
7	Aggregate Base, Class II (0.50')	2,615	SF	0.90	2,353.50	2,615	2,353.50
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10	Remove Existing Pavement	2,615	SF	7.00	18,305.00	2,615	18,305.00
11	Street Name Sign & Post	1	EA	511.00	511.00	1	511.00
6	Commercial Driveway (32' wide)	1	EA	3,000.00	3,000.00	1	3,000.00
<b>Subtotal</b>					<b>\$65,269.50</b>	<b>Subtotal</b>	<b>\$68,269.50</b>
Total Construction Cost							\$68,269.50
Engineering & Administration (10% of Construction Costs)							\$6,826.95
Contingencies (10% of Construction Costs)							\$6,826.95
<b>TOTAL COST</b>						<b>A. Total</b>	<b>\$81,923.40</b>

1. Assumes replacing sidewalk along Locust Street and Main Street.

## ACKNOWLEDGMENT

State of California  
County of San Joaquin

On October 6, 2011 before me, Randi Johl  
(insert name and title of the officer)

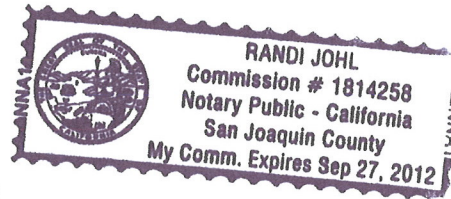
personally appeared C Dean Shabler Jr.,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]

(Seal)



RESOLUTION NO. 2011-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING IMPROVEMENT DEFERRAL  
AGREEMENT WITH OLDE ICE HOUSE CELLARS, LLC,  
FOR 27 EAST LOCUST STREET

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Improvement Deferral Agreement between the City of Lodi and the Olde Ice House Cellars, LLC, for installation of public improvements for the facility located at 27 East Locust Street; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the agreement on behalf of the City of Lodi.

Dated: November 16, 2011

=====

I hereby certify that Resolution No. 2011-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2011, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk



## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Third Supplemental Agreement to Pixley Park Property Exchange Agreement and Improvement Agreement with GFLIP III, L. P., to Provide Time Extension

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute Third Supplemental Agreement to Pixley Park Property Exchange Agreement and Improvement Agreement with GFLIP III, L. P., to provide time extension.

**BACKGROUND INFORMATION:** The City and the developer, GFLIP III, L. P., entered into a land exchange agreement in December 2004 (Resolution No. 2004-248) per City Council's direction. As shown on Exhibits A and B, the land exchange agreement adjusts the property lines to reconfigure the Pixley Park C-Basin to allow development of the park site per the approved Pixley Park Conceptual Plan.

As part of the land exchange agreement, the developer agreed to construct all the required frontage improvements fronting the proposed park site on Auto Center Drive and to excavate the basin to conform to the final grading of the future park layout. The executed agreement gave the developer until December 2007 to complete the obligations of the agreement.

The developer entered into a Supplemental Agreement with the City on January 23, 2008, and a Second Supplemental Agreement on November 16, 2009 to extend the completion of the basin excavation to December 2011, due to problems with the ability of the developer's contractor to move and sell the excavated soil.

The developer's contractor has completed the majority of the public improvements and has excavated half of the basin. Due to the current economic climate, the grading of the basin will not be completed by the agreed upon date. The developer's contractor anticipated being able to sell dirt to be used as fill on other projects. These projects have not materialized as expected.

The developer is requesting to extend the completion date of the improvement agreement and the original land exchange agreement to December 31, 2014, to complete all the required improvements and grading of the park site. Since the City does not currently have funds to construct the proposed features at the park site, staff supports an extension to the completion date of the basin excavation and land exchange.

The developer has executed the Third Supplemental Agreement and paid the document preparation fees.

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

**FISCAL IMPACT:** There will be no direct fiscal impact on the extension of the basin excavation and land exchange completion date. The developer/contractor is responsible for the basin maintenance during the extension period; hence, the City's part of the maintenance cost will be reduced.

**FUNDING AVAILABLE:** Not applicable.

---

F. Wally Sandelin  
Public Works Director

Prepared by Lyman Chang, Senior Civil Engineer

FWS/LC/pmf

Attachments

cc: GFLIP III, L. P.  
Park Superintendent  
Deputy Public Works Director – Utilities  
Senior Civil Engineer

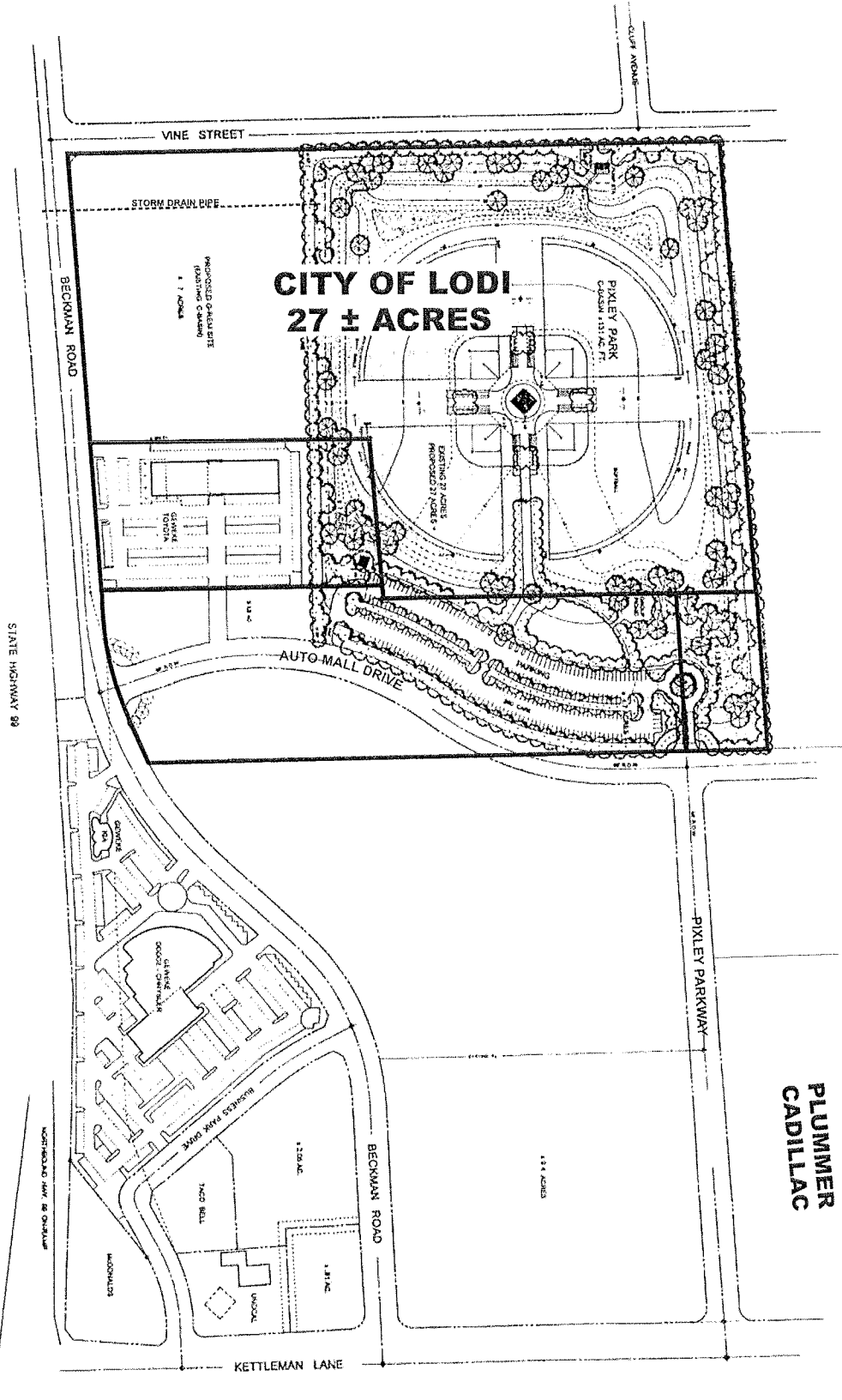


# CITY OF LODI

PUBLIC WORKS DEPARTMENT

## EXHIBIT A

### EXISTING LOT LINES



**CONCEPTUAL MASTER PLAN**  
**Pixley Park - Geweke Auto Mall**  
G-REM, INC.  
City of Lodi California  
Lawrence A. Norstrom, ASLA Landscape Architect  
July 2003





## PROPOSED PROPERTY LINES



RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
 )  
City Clerk )  
City of Lodi, City Hall )  
221 Pine Street )  
Lodi, CA 95241 )

APN: 049-250-72

(Space Above for Recorder's Use Only)

**THIRD SUPPLEMENTAL AGREEMENT  
to the  
PIXLEY PARK  
PROPERTY EXCHANGE AGREEMENT  
AND  
IMPROVEMENT AGREEMENT**

This Third Supplemental Agreement to the Pixley Park Property Exchange Agreement and the Improvement Agreement for The Public Improvements of Pixley Park Site Grading ("Third Supplemental Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Lodi, a municipal corporation ("CITY") and GFLIP III, L. P., a California Limited Partnership ("DEVELOPER"), (collectively the "Parties")

RECITALS:

WHEREAS, the Parties entered into the Pixley Park Property Exchange Agreement, dated November 29, 2004 ("Exchange Agreement"), to address the responsibilities of CITY and DEVELOPER for the Pixley Park property exchange; and

WHEREAS, the Parties have entered into the Addendum to the Pixley Park Property Exchange Agreement dated March 29, 2006 ("Addendum to Exchange Agreement"), to address the grading of the Pixley Park Site (described more fully in Item No. 2 of the Addendum to the Exchange Agreement); and

WHEREAS, the Parties have entered into an Improvement Agreement for the Public Improvements of Pixley Park Site Grading ("Improvement Agreement"), to address public improvements and grading of the Pixley Park Site; and

WHEREAS, the Parties have entered into a Supplemental Agreement to the Pixley Park Property Exchange Agreement and Improvement Agreement ("Supplemental Agreement") dated January 23, 2008, to extend the basin excavation and the land exchange completion date to December 31, 2009; and

WHEREAS, the Parties have entered into a Second Supplemental Agreement to the Pixley Park Property Exchange Agreement and Improvement Agreement ("2<sup>nd</sup> Supplemental Agreement") dated November 16, 2009, to extend the basin excavation and the land exchange completion date to December 31, 2011; and

WHEREAS, DEVELOPER desires to extend the terms of the Exchange Agreement and Improvement Agreement to allow additional time for the basin excavation at the Pixley Park Site.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, it is hereby agreed by and between the Parties as follows:

1. This Third Supplemental Agreement supplements the Exchange Agreement, Addendum to Exchange Agreement, the Improvement Agreement, Supplemental Agreement, and 2<sup>nd</sup> Supplemental Agreement previously executed by the Parties.
2. The Parties agree to extend the completion date of the required improvements and property exchange as set forth in the various agreements entered into by the parties and described in paragraph 1 above, to and including December 31, 2014.
3. DEVELOPER shall provide and keep current the necessary securities and insurance as specified in the Exchange Agreement, Addendum to Exchange Agreement and Improvement Agreement.
4. All other terms and conditions of the Exchange Agreement, Addendum to Exchange Agreement Improvement Agreement, Supplemental Agreement, and the 2<sup>nd</sup> Supplemental Agreement shall remain unchanged, except as modified hereinabove.
5. DEVELOPER agrees to pay all additional costs for preparation and execution of this Third Supplemental Agreement.
6. This Third Supplemental Agreement shall run with the land and be binding on the DEVELOPER, its heirs, successors or assigns.
7. A copy of this Third Supplemental Agreement shall be recorded in the office of the San Joaquin County Records, P. O. Box 1968, Stockton, California, 95201-1968.
8. Any notice required to be given by the terms of this Third Supplemental Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or in three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

Notices required to be given to CITY shall be addressed as follows:

F. Wally Sandelin  
Public Works Director  
City of Lodi  
P. O. Box 3006  
Lodi, CA 95240-1910

Notices required to be given to DEVELOPER shall be addressed as follows:

GFLIP III L. P., a California Limited Partnership

DARYL GFWERKE  
1139 E. KETTLEMANN LANE  
LODI, CA 95240

IN WITNESS WHEREOF, the Parties hereto have set their hands the day, month and year appearing opposite their names.

CITY OF LODI, a municipal corporation

Dated: \_\_\_\_\_ 2011

By: \_\_\_\_\_  
Konradt Bartlam, City Manager

Attest: \_\_\_\_\_  
Randi Johl, City Clerk

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA, )  
COUNTY OF SAN JOAQUIN )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature of Notary Public)

Seal

GFLIP III, L. P., a California Limited Partnership

Dated: 9/29/ 2011

By: \_\_\_\_\_  
Name: DARYL GENEKE  
Title: TRUSTEE, DARYL GENEKE AND OPAL GENEKE  
FAMILY TRUST, GENERAL PARTNER

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA, )  
COUNTY OF SAN JOAQUIN )

On SEPTEMBER 29<sup>TH</sup>, 2011 before me, JYOTISHNA KUMAR, personally appeared DARYL GENEKE personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

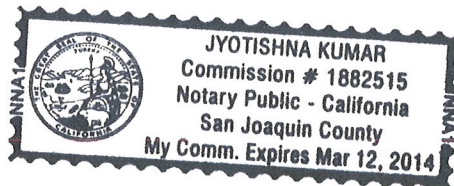
WITNESS my hand and official seal.

Jyotishna Kumar  
(Signature of Notary Public)

Seal

Approved as to Form:

D. Stephen Schwabauer  
City Attorney



RESOLUTION NO. 2011-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THIRD  
SUPPLEMENTAL AGREEMENT TO PIXLEY PARK PROPERTY  
EXCHANGE AGREEMENT AND IMPROVEMENT AGREEMENT

=====

WHEREAS, the City of Lodi and the developer, GFLIP III, L. P., entered into a land exchange agreement in December 2004 to reconfigure the Pixley Park C-Basin to allow development of the park site per the approved Pixley Park Conceptual Plan. As part of the land exchange agreement, the developer agreed to construct all the required frontage improvements fronting the proposed park site on Auto Center Drive and to excavate the basin to conform to the final grading of the future park layout. The executed agreement gave the developer until December 2007 to complete the obligations of the agreement; and

WHEREAS, the developer entered into a Supplemental Agreement with the City on January 23, 2008, and a Second Supplemental Agreement on November 16, 2009, to extend the completion of the basin excavation to December 2009 and December 2011, respectively, due to difficulties in moving and selling the excavated soil; and

WHEREAS, the developer requested to extend the completion date of the improvement agreement and the original land exchange agreement to allow extra time to complete all the required improvements and grading of the park site. Since the City does not currently have funds to construct the proposed features at the park site, staff supports an extension to the completion date of the basin excavation and land exchange to December 31, 2014; and

WHEREAS, the developer has executed the Supplemental Agreement and has paid the required document preparation fees.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Third Supplemental Agreement to the Pixley Park Property Exchange Agreement and Improvement Agreement with GFLIP III, L. P.; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the agreement on behalf of the City.

Dated: November 16, 2011

=====

I hereby certify that Resolution No. 2011-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2011, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk





## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Task Order No. 32 with West Yost Associates, of Davis, for Preparation of the City's Report of Waste Discharge (\$33,100)

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute Task Order No. 32 with West Yost Associates, of Davis, for preparation of the City's Report of Waste Discharge, in the amount of \$33,100.

**BACKGROUND INFORMATION:** The City's current wastewater discharge permit, issued by the State Central Valley Regional Water Quality Control Board, is scheduled to expire on September 1, 2012. On July 20, 2011, Council authorized West Yost Associates (WYA) to continue providing assistance in meeting permit compliance requirements through September 2012.

Under the current master agreement executed January 13, 1999, WYA has been the City's primary wastewater engineering firm for the White Slough facility and has consistently provided the City with excellent service. However, since the City's relationship with WYA has spanned over a decade, staff felt it prudent to evaluate other companies in order to determine the best-suited firm for providing continued National Pollutant Discharge Elimination System (NPDES) permit assistance through the City's next permit cycle.

On October 6, 2011, five firms were interviewed as part of a professional services selection process (Psomas Engineering, Brown & Caldwell, WYA, Carollo Engineers, and Stantec). Based on the interview results, two firms were shortlisted (Stantec and WYA). To evaluate cost, staff asked each firm to provide a proposal for preparing the City's Report of Waste Discharge (ROWD). The ROWD is the document that initiates the City's next permit negotiation process and is due on March 4, 2012. On October 14, 2011, ROWD-preparation proposals were submitted by WYA (\$33,100) and Stantec (\$29,000).

Both firms are competitive in price and technical expertise. However, WYA possesses significantly more institutional knowledge of the City's current permit, treatment processes and land application requirements. For this reason, staff recommends selecting WYA. The WYA proposal is attached.

**FISCAL IMPACT:** The City's NPDES permit requirements must be followed by law. Nonperformance would subject the City to significant fines. The costs associated with this work have been anticipated in the City's Wastewater funding requirements.

**FUNDING AVAILABLE:** Wastewater Operating Fund (170403): \$33,100

\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

\_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

Prepared by Charles E. Swimley, Jr., Deputy Public Works Director – Utilities  
Attachment  
cc: Deputy Public Works Director – Utilities

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



PROPOSAL

CITY OF LODI

# Wastewater Utility NPDES Permit Assistance — Report of Waste Discharge





October 14, 2011

Mr. Charles E. Swimley Jr., P.E.  
Deputy Public Works Director - Utilities  
1331 South Ham Lane  
Lodi, California 95242

SUBJECT: Proposal to Provide Engineering Services—City of Lodi White Slough Water Pollution Control Facility Report of Waste Discharge

Dear Mr. Swimley:

West Yost Associates (West Yost) is pleased to present this proposal to develop a Report of Waste Discharge (ROWD) for the City of Lodi (City) White Slough Water Pollution Control Facility. The primary purpose of this effort will be to develop a complete and accurate permit application, which must be submitted to the Central Valley Regional Water Quality Control Board (Regional Board) by March 4, 2012, in accordance with the City's current Permit.

As requested, the following information is enclosed:

- A not to exceed fee proposal for preparing the City's Report of Waste Discharge including an hourly estimate, fee schedule and project schedule.
- A fee schedule reflecting hourly charge rates for the staff proposed in the SOQ. The hourly rates would be for "on call" services effective through December 31, 2012.

The total fee for completing the ROWD is estimated to be \$33,100. The ROWD will include a comprehensive evaluation of the City's data, quantification and reporting the anticipated effluent limitations, and clearly defining the City's long-term compliance strategy. Our history working with the City on regulatory matters will facilitate efficient development of this ROWD information.

The scope of services included in the attached proposal does not reflect subsequent on-call services that will likely be required after the ROWD has been submitted. West Yost will work with the City to define the scope of services for these on-call services as the project and other needs develop.

West Yost appreciates the opportunity to provide permitting services to the City and are excited to have an opportunity to work with the City through the next permit cycle. If you have any questions or need additional information, please do not hesitate to call Kathryn at (925) 461-6795.

Sincerely,

WEST YOST ASSOCIATES

A blue ink signature of Bruce G. West, written in a cursive style.

Bruce G. West, P.E.  
Principal-in-Charge

A blue ink signature of Kathryn E. Gies, written in a cursive style.

Kathryn E. Gies, P.E.  
Principal Engineer and Project Manager



# **CITY OF LODI**

## **WHITE SLOUGH WATER POLLUTION CONTROL FACILITY**

### **REPORT OF WASTE DISCHARGE**

#### **BACKGROUND**

The current Permit was issued by the Regional Board on September 14, 2007 and expires September 1, 2012. The Permit includes a number of effluent limitations, which required that the City complete major upgrades to the Water Pollution Control Facility (WPCF) to achieve reliable compliance. In 2009, the City completed the WPCF upgrade projects needed to achieve this compliance. West Yost completed on behalf of the City a report titled: *Treatment Feasibility Study and Request for Flow Increase* (dated January 12, 2011). This report documents that the City is in compliance with all of the permit limitations for surface water discharge. As a result of this effort, the Regional Board issued a letter on August 15, 2011 that provides an *Approval of Flow Increase*. We will use the effluent characterization developed for the *Treatment Feasibility Study and Request for Flow Increase* as the basis for the development of the ROWD. As a result, very little effort will be needed to develop the effluent characterization data for the ROWD.

The City has also been working toward achieving compliance with the groundwater limitations included in the current Permit. A key part of this effort has been defining the Groundwater “background” conditions. In support of this effort, West Yost prepared on behalf of the City the *Background Groundwater Quality Characterization Report* (dated January 2011). We will clearly describe and use the information in this report, in addition to the information developed for a number of other studies we completed on behalf of the City, to complete the ROWD. Accurate and clear characterization of the information and conclusions of these studies will ensure Regional Board staff has an adequate understanding of the current groundwater conditions and the potential for the WPCF activities to affect those conditions. The relevant reports that we will consider in preparing the ROWD include:

- Organic Loading Study,
- Industrial Influent Characterization Study,
- Best Practicable Treatment and Control Evaluation Work Plan, and
- Annual Land Application Reports.

#### **APPROACH**

West Yost’s approach for developing ROWDs involves developing a comprehensive evaluation of the discharger’s data, quantifying and reporting the anticipated effluent limitations, and definition of a clear compliance strategy. West Yost has been providing regulatory compliance services to the City for a number of years. As such, we have well maintained a database and library of the relevant information, and have already completed the majority of efforts needed to develop a comprehensive ROWD.

To ensure we capture the important information needed to convey a complete understanding of the City's data (with a particular emphasis on the groundwater data), we will facilitate a meeting between the City and Regional Board staff prior to developing the ROWD to discuss the City's previous efforts and identify areas where there may still be outstanding concerns. This will help ensure that the ROWD adequately addresses any outstanding concerns.

Following this meeting, the first step in the ROWD process will be to evaluate the WPCF's historical data and identify the constituents that are, or have been, discharged in excess of applicable water quality objectives. These constituents are often referred to as the "constituents of concern," and the new WDRs will include effluent limitations for each of these constituents. Based on efforts completed to date, we have already identified the following potential constituents of concern for the WPCF:

- Nitrate,
- Nitrite,
- Ammonia, and
- Manganese.

The first three constituents listed above are included as constituents of concern in all of the NPDES permits issued for municipal wastewater treatment plants in the Central Valley. This is because all Central Valley municipal wastewater treatment plants have elevated levels of ammonia that must be treated to very low standards. This treatment step, called nitrification, converts ammonia to nitrate and nitrite. Consequently, all treatment plants have the potential to discharge these three parameters in concentrations that exceed water quality objectives. However, since the completion of the 2009 upgrade, the City has not had a problem complying with the effluent limitations for ammonia, nitrate and nitrite and it is anticipated that the City will not have significant compliance issues with respect to these constituents in the future.

The fourth constituent listed above, manganese, is not present in the wastewater influent but is present in the WPCF 2W water supply. In one sample collected over the last 5 years the effluent concentration of manganese exceeded the applicable water quality objective for manganese. In the past, the Regional Board would have compared this one sample to the water quality objective and would have concluded that an effluent limitation is needed. However, recent permits issued by the Regional Board have considered a comparison of the annual average concentrations of manganese to the applicable criteria when considering whether an effluent limitation is needed for manganese for a given discharger. West Yost will use this same approach in the ROWD - arguing that because the annual average manganese levels are less than the water quality objective, an effluent limitation for manganese is not necessary.

## **SCOPE OF SERVICES**

The following discussion provides a detailed description of our proposed scope of work for completing the ROWD. The tasks included in the scope of work are:

- Task 1 - Report of Waste Discharge
- Task 2 - Permit Application Forms
- Task 3 - Project Management and Meetings

## **Task 1. Report of Waste Discharge**

We will perform the following subtasks supporting completion of a comprehensive ROWD for the WPCF.

### Effluent Flow and Water Quality Analysis

Under this task, we will utilize our existing database to complete an evaluation of the average and maximum daily flows, and the average dry weather flows for the last three years for inclusion in the ROWD. In addition, an assessment of the influent and effluent loadings of conventional pollutants will be provided. We will also update our recent assessment of the priority pollutants of concern in the City's effluent for the ROWD. This assessment will include an evaluation of the data collected by the City over the last year under the Effluent and Receiving Water Characterization Study. The assessment of priority pollutants that will be completed is referred to as a reasonable potential analysis. Where appropriate, West Yost will determine the anticipated future effluent limitations for each of the constituents of concern identified through the reasonable potential analysis.

### Process Description

We will include in the ROWD the required description of the WPCF, layout drawings, and schematic diagrams illustrating the wastewater and solids treatment and handling operations. We will also include in the ROWD a description of the City's existing recycled water uses, an overview of historic field loadings, a description of the land application area Best Management Practices (including wintertime operational strategies to minimize impacts potentially associated with flooding), a description of the pond facility operations (including management of pond freeboard levels), and a summary of the treatment facility information included in the City's Title 22 Report. We have already developed these work products under previous efforts, and therefore, West Yost will bring cost efficiency to preparation of the ROWD.

### Biosolids Generation and Disposal Assessment

West Yost will develop for the ROWD a description of the current and proposed future biosolids generation and disposal practices. This will include a presentation of available biosolids testing data. This information is included in the spreadsheet tool database already that we developed for the City.

### Toxicity Evaluation

West Yost will evaluate and provide a summary of the City's historical chronic and acute toxicity monitoring data for inclusion in the ROWD. This analysis will also include an assessment of the historical testing procedures in comparison to the current standards required by the Regional Board.

### Industrial Discharger Assessment/Pollution Prevention Plan

We will review recent flow characteristics data for each of the major industrial wastewater discharges to the WPCF and update (if necessary) the major industrial discharger data that was presented in the previous ROWD. The ROWD will also summarize the Pollution Prevention efforts that are documented in the Pollution Prevention Plan (PPP) completed by West Yost on behalf of the City in September 2010. The proposed efforts involve implementing a Best Management Practices (BMP) approach to educate the dentistry community of Lodi regarding the BMPs that can help reduce the potential for impacting waterways with the mercury discharged

from their facilities. This program will provide information to the dentist regarding amalgam separator devices; however, the City will not require the installation of these devices.

### Receiving Water Assessment

We will summarize the currently available data to demonstrate whether the WPCF can comply with the receiving water-based limitations included in the City's existing Permit. In general, the City can readily comply with the majority of the receiving water-based limitations because these discharge levels are significantly lower than the receiving water criteria. Therefore, for these parameters no analysis is needed. However, some discussion would be warranted in the ROWD for the following:

- The current permit states that the City's discharge shall not cause the dissolved oxygen (D.O.) concentration in the receiving water to be reduced below 5.0 mg/L at any time. West Yost documented in the City's previous ROWD that, although the receiving water D.O. does at times drop below 5 mg/L, decreases in receiving water D.O. are not attributable to the WPCF discharge. As a result of this previous effort, the concerns regarding D.O. impacts that were in the City's 2000 permit were not included in the 2007 permit. It will be important to provide an update to the previous analysis in the ROWD to ensure concerns are not raised again regarding the impacts of the discharge on the receiving water D.O.
- The current permit also states that the discharge shall not cause the pH to be depressed below 6.5 or raised above 8.5. In a letter dated April 6, 2011, the Regional Board raised concerns regarding observed elevated pH levels in the receiving water. West Yost helped the City develop a response to this concern that discussed the relationship between phytoplankton (algae) and daily pH cycles and demonstrated that patterns of elevated D.O. and pH similar to those observed near the WPCF outfall have been observed in the San Joaquin River upstream of the City of Stockton Wastewater Treatment Facility. In addition, elevated nutrient and D.O. levels have historically been measured throughout the Delta – particularly during the winter months. Finally, a review of pH, D.O. and nitrogen levels in the receiving water at the various locations monitored by the City (both upstream and downstream of the discharge) show similar levels of nitrate, pH and D.O. This information would suggest that the discharge of nitrate from the WPCF has little impact on algae production in the receiving water, and larger, more regional influences are more likely the cause. It will be important to capture this information in the ROWD to ensure concerns are not raised in the next permit regarding the impacts of the discharge on the receiving water pH.

- The current permit does not include receiving water limitations for temperature. However, the permit does require the City to complete a Temperature Study to identify the appropriate temperature requirements for the discharge. Robertson-Bryan Inc., (subconsultant to West Yost) completed this study on the City's behalf in June 2010. Based on this effort, the following limitations are proposed:
  - The WPCF effluent shall not cause the temperature in Dredger Cut (as measured as RSW-001, which is 1,000 feet west of the discharge point) to exceed the following limitations, on an instantaneous basis:
    - 86°F for the period May through October,
    - 80°F for the month of April,
    - 75°F for the period March through November, and
    - 68°F for the period December through February.

Based on data collected by the City, the City is expected to readily comply with this new requirement. Nevertheless, the ROWD will need to summarize the results of the Temperature Study and provide a discussion of the historical data with respect to the proposed limitation.

#### Groundwater Characterization

West Yost has performed extensive monitoring and evaluation of the groundwater underlying the City's treatment and land application areas on behalf of the City. This data will be summarized for the ROWD. This will included a concise summary of the background characterization study and its conclusions.

#### Draft and Final Report of Waste Discharge Report

West Yost will develop the ROWD document. This report will be submitted as draft to the City for review. Following City review and incorporation of comments, we will finalize the ROWD and provide it to the City for submittal to the Regional Board.

### **Task 2. Permit Application Forms**

West Yost will develop the NPDES permit application forms that must accompany the ROWD. These documents will be submitted in draft to the City for review. Following City review and incorporate of comments, we will finalize these documents and provided them to the City for submittal along with the ROWD to the Regional Board.

### **Task 3. Project Management and Meetings**

This task will consist of project management activities, including client communications, general project coordination, and West Yost internal project management meetings. Brief descriptions of services performed will be included on monthly invoices.

In addition, to ensure continued achievement of consistently high quality work products, and in accordance with the West Yost Quality Assurance/Quality Control (QA/QC) policy, a West Yost staff member at the Principal Engineer level or higher will provide a review of key scope items and significant work products. The review will include timely suggestions for corrective actions where appropriate.

Finally, it is anticipated that West Yost will need to participate in up to two (2) meetings with the City and/or Regional Board staff at some point during the ROWD development process.

## PROJECT BUDGET

Our estimated fee to perform the proposed scope of work described above is \$33,100. A breakdown of the estimated costs by task is shown in Table 1 and a detailed fee estimate and hourly breakdown is attached. West Yost will perform all work on a time and materials basis at standard company charge rates, and will not exceed the estimated cost without written authorization. Our current charge rate schedule is attached. We will not perform work in excess of the budgeted amount without the City's prior written authorization.

<b>Table 1. Estimated Project Fee for the WPCF Report of Waste Discharge</b>	
<b>Task</b>	<b>West Yost Estimated Staff Budget, dollars</b>
Prepare Report of Waste Discharge	20,400
Permit Application Forms	8,000
Project Management and Meetings (2)	4,700
<b>Total Project Budget</b>	<b>33,100</b>

## SCHEDULE

A detailed project schedule is attached. Work will begin upon notice to proceed. Given the limited timeline, it is recommended that a meeting be scheduled with the Regional Board staff as soon as possible after the City provides notice to proceed. The first draft of the ROWD will be submitted to the City for review by January 25<sup>th</sup>. West Yost will then participate in a meeting with the City following an estimated three-week review period. Following this meeting, the City will have an additional week to provide comments to West Yost – for a total review period of four weeks. West Yost will then develop the final ROWD documents for submission to the City no later than February 29<sup>th</sup>. This should provide adequate time for the City to submit the ROWD and permit application to the Regional Board by March 2, 2012.

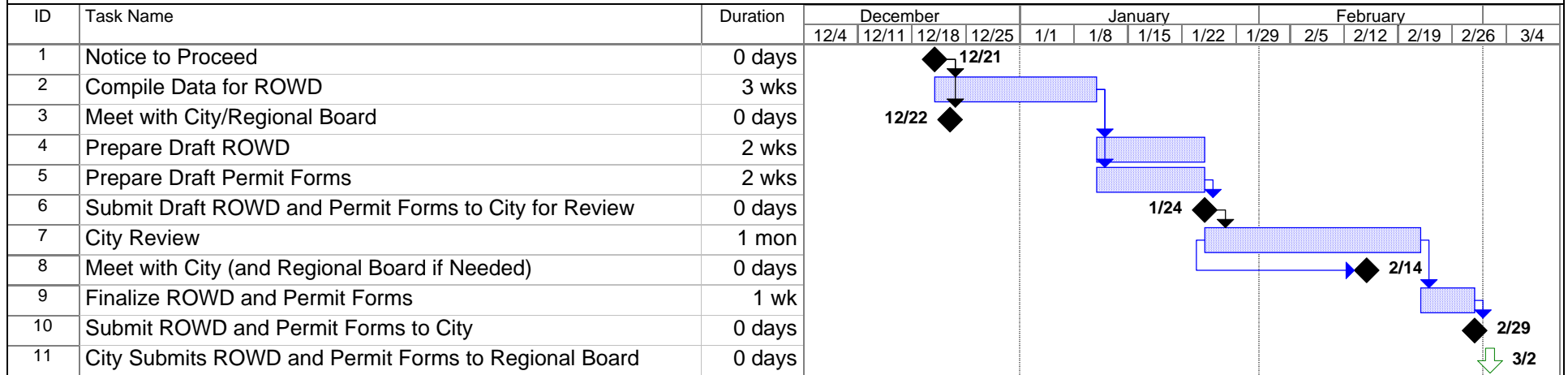
## ADDITIONAL SERVICES

Following the submission of the ROWD, the Regional Board may request additional meetings, information, and/or other analyses to support the information presented in the permit application documents. In addition, it is anticipated that the City will require support in reviewing the draft Permit and developing a document that summarizes the City's comments on the draft Permit. Finally, the new Permit will likely include some monitoring and/or reporting requirements that the City may request support from West Yost to develop. In addition to these permit related efforts, West Yost will also continue to be available to the City to assist (if requested) with other related wastewater matters, including: WPCF operational assistance and review; UV disinfection system evaluations; and design services. It is anticipated that the scope and fee for any services needed following the submission of the ROWD will be negotiated with the City at a later date.



Estimated Staff Hours and Budget West Yost Associates		P/VP \$206 West/Pelz	PE/PS \$179 Gies	PE/PS \$179 Loy	D/CAD \$92 Nichols	ADMIII \$81 Admin	Labor		Drafting		Modeling		Costs			
PROJECT: ROWD Assistance							Hours	Fee	Hours	Fee 25	Hours	Fee 25	Routine ODC 5%	Sub. w/ markup 10%	Other Direct	Total Costs
Task 1.0 Prepare ROWD																
1.01	Flows, Concentrations, RPA Calculations		16				16	\$ 2,864					\$ 143	\$ -		\$ 3,007
1.02	Process Description		4		2		6	\$ 900					\$ 45	\$ -		\$ 945
1.03	Biosolids Generation and Disposal		4				4	\$ 716					\$ 36	\$ -		\$ 752
1.04	Toxicity Evluation		8				8	\$ 1,432					\$ 72	\$ -		\$ 1,504
1.05	Industrial Discharger Assessment/PPP		4				4	\$ 716					\$ 36	\$ -		\$ 752
1.06	Receiving Water Assesment		8				8	\$ 1,432					\$ 72	\$ -		\$ 1,504
1.07	Groundwater Characerization		8	8			16	\$ 2,864					\$ 143	\$ -		\$ 3,007
1.08	ROWD Draft/Final	2	40		2	8	52	\$ 8,404					\$ 420	\$ -	\$ 100	\$ 8,924
Subtotal, Task 1 (hours)		2	92	8	4	8	114		0		0					
Subtotal, Task 1 (\$)		\$ 412	\$ 16,468	\$ 1,432	\$ 368	\$ 648		\$ 19,328		\$ -		\$ -	\$ 966	\$ -	\$ 100	\$ 20,394
Task 2.0 Permit Application Forms																
2.01	Permti Application Forms	2	40				42	\$ 7,572					\$ 379	\$ -		\$ 7,951
Subtotal, Task 2 (hours)		2	40	0	0	0	42		0		0					
Subtotal, Task 2 (\$)		\$ 412	\$ 7,160	\$ -	\$ -	\$ -		\$ 7,572		\$ -		\$ -	\$ 379	\$ -	\$ -	\$ 7,951
Task 3.0 Project Management and Meetings																
3.01	Meetings (2)		12				12	\$ 2,148					\$ 107	\$ -		\$ 2,255
3.02	General PM	4	8				12	\$ 2,256					\$ 113	\$ -	\$ 76	\$ 2,445
Subtotal, Task 3 (hours)		4	20	0	0	0	24		0		0					
Subtotal, Task 3 (\$)		\$ 824	\$ 3,580	\$ -	\$ -	\$ -		\$ 4,404		\$ -		\$ -	\$ 220	\$ -	\$ 76	\$ 4,700
TOTAL (hours)		8	152	8	4	8	180		0		0					
TOTAL (\$)		\$1,648	\$27,208	\$1,432	\$368	\$648		\$ 31,304		\$ -		\$ -	\$ 1,565	\$ -	\$ 176	\$ 33,045

## City of Lodi White Slough Water Pollution Control Facility Report of Waste Discharge Project Schedule



Project: City of Lodi WPCF ROWD  
Date: Fri 10/14/11

Task



Milestone



Deadline





It is anticipated that the scope and fee for any on call services will be negotiated with the City following the submission of the ROWD. The hourly charge rates for the key West Yost staff identified in the SOQ is provided in the detailed cost estimate for the ROWD. The hourly charge rates for other key staff identified in the SOQ include: Ms. Roberta Larson, a shareholder in the law firm of Somach, Simmons, and Dunn, who's charge rate is \$310/hour; Mr. Michael Bryan, a Principal Scientist and owner of Robertson-Bryan, Inc., who's charge rate is \$230/hr; Mr. Andrew Salveson, an Associate Vice President with Carollo Engineers, who's charge rate is \$197/hr; and Mr. Matt Moyner, an engineer at Wallace-Kuhl & Associates, who's charge rate is \$130/hr.

In addition, we have attached a fee schedule for all West Yost and Robertson-Bryan Inc. staff. As the nature of future on-call services is uncertain, it may be necessary to engage staff from within these two firms to assist with future efforts.

Note that the attached fee schedule for West Yost staff reflects our current charge rates, which have not been adjusted since December 2008. We are currently assessing whether an increase to these rates will occur for 2012. We understand our clients have also experienced financial stress over the last few years and we have consequently worked to keep our charge rates low. Nevertheless, we cannot continue to hold to our existing charge rates indefinitely. The increase for 2012, if any, will be 3 percent or less.

# WEST YOST ASSOCIATES, INC.

## 2011 Billing Rate Schedule

(Effective January 1, 2011 through December 31, 2011)\*

Position	Labor Charges (dollars per hr)
Principal/Vice President	206
Engineering Manager	196
Principal Engineer/Scientist	179
Senior Engineer/Scientist/GIS Analyst	161
Associate Engineer/Scientist	144
GIS Analyst	144
Engineer II/Scientist II	127
Engineer I/Scientist I	110
Construction Manager III	156
Construction Manager II	144
Construction Manager I	133
Resident Inspector III	121
Resident Inspector II	112
Resident Inspector I	98
Sr. Designer/Sr. CAD Operator	104
Designer/CAD Operator	92
Technical Specialist II	90
Technical Specialist I	78
Engineering Aide	65
Administrative IV	92
Administrative III	81
Administrative II	69
Administrative I	58

Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, Travel, etc. will be billed at actual cost plus 15%.

Direct Costs including general computers, system charges, telephone, fax, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses will be billed at 5% of West Yost labor charges.

Mileage will be billed at the current Federal Rate.

Subconsultants will be billed at actual cost plus 10%.

Computers are billed at \$25 per hour for specialty models and AutoCAD.

Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.

A Finance Charge of 1.5 percent per month (an Annual Rate of 18 percent) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

Billing rates apply to all computers and equipment, whether owned or rented by West Yost, and to all employment categories including regular full-time, part-time, limited term and contract personnel as defined in West Yost's Employee Handbook.

\*This schedule will be updated annually

# WEST YOST ASSOCIATES, INC.

## 2011 Billing Rate Schedule

(Cont'd.)

(Effective January 1, 2011 through December 31, 2011)\*

### SURVEYING AND EQUIPMENT CHARGES

Position	Labor Charges (dollars per hr)
GPS, 3-Person	317
GPS, 2-Person	271
GPS, 1-Person	213
Survey Crew, 2-Person	230
Survey Crew, 1-Person	173

### EQUIPMENT CHARGES

Equipment	Billing Rate (dollars per day)	Billing Rate (dollars per week)
DO Meter	16	77
pH Meter	5	24
Automatic Sampler	120	658
Transducer/Data Logger	38	190
Hydrant Pressure Gage	11	47
Hydrant Pressure Recorder (HPR)	—	190
Hydrant Wrench	5	30
Pitot Diffuser	27	124
Well Sounder	27	124
Ultrasonic Flow Meter	—	249
Vehicle	82	412
Velocity Meter	11	60
Water Quality Multimeter	163	891
Thickness Gage	—	66

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\*This schedule will be updated annually



## 2011-2012 FEE SCHEDULE

Charges for project work performed by Robertson-Bryan, Inc. (RBI) will be calculated and billed at the hourly rates shown below.

PROFESSIONAL SERVICES	RATE/HOUR
♦ Principal Engineer/Scientist	\$230.00
♦ Resource Director	\$195.00
♦ Senior Engineer/Scientist II	\$185.00
♦ Senior Engineer/Scientist I	\$175.00
♦ Project Engineer/Scientist III	\$165.00
♦ Project Engineer/Scientist II	\$160.00
♦ Project Engineer/Scientist I	\$145.00
♦ Staff Engineer/Scientist II	\$135.00
♦ Staff Engineer/Scientist I	\$130.00
♦ Technical Analyst	\$120.00
♦ Graphics/GIS	\$115.00
♦ Administrative Assistant	\$80.00
♦ Intern	\$55.00

Up to ten percent (10%) of subcontractor charges will be added to cover administrative costs. Hourly rates will be increased by a minimum of fifty percent (50%) for depositions, trials, and hearings.

### INVOICING AND PAYMENTS

Invoices will be issued on a monthly basis for all work performed on a project. Payment is due upon receipt of the invoice.

RESOLUTION NO. 2011-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE  
CITY MANAGER TO EXECUTE TASK ORDER NO. 32 WITH WEST  
YOST ASSOCIATES FOR PREPARATION OF THE CITY'S REPORT  
OF WASTE DISCHARGE

=====

WHEREAS, the City's current wastewater discharge permit, issued by the State Central Valley Regional Water Quality Control Board, is scheduled to expire on September 1, 2012; and

WHEREAS, under the current master agreement executed January 13, 1999, West Yost Associates, of Davis, has been the City's primary wastewater engineering firm for the White Slough facility and has consistently provided the City with excellent service. However, since the City's relationship with West Yost Associates has spanned over a decade, staff felt it prudent to evaluate other companies in order to determine the best-suited firm for providing continued National Pollutant Discharge Elimination System (NPDES) permit assistance through the City's next permit cycle; and

WHEREAS, five firms were interviewed, and based on interview results, two firms were asked to provide a proposal for preparation of the City's Report of Waste Discharge. On October 14, 2011, proposals were submitted by West Yost Associates (\$33,100) and Stantec (\$29,000); and

WHEREAS, both firms are competitive in price and technical expertise; however, staff recommends selecting West Yost Associates as that firm possesses significantly more institutional knowledge of the City's current permit, treatment processes and land application requirements.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Task Order No. 32 with West Yost Associates, of Davis, California, in the amount of \$33,100, for the preparation of the City's Report of Waste Discharge.

Dated: November 16, 2011

=====

I hereby certify that Resolution No. 2011-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2011, by the following vote:

AYES: COUNCIL MEMBERS –  
NOES: COUNCIL MEMBERS –  
ABSENT: COUNCIL MEMBERS –  
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Ratifying Employment Agreement Entered Into Between the City of Lodi and Lawrence R. Rooney

**MEETING DATE:** November 16, 2011

**PREPARED BY:** City Manager

---

**RECOMMENDED ACTION:** Adopt Resolution ratifying Employment Agreement entered into between the City of Lodi and Lawrence R. Rooney.

**BACKGROUND INFORMATION:** Lodi Municipal Code Section 2.12.060 vests with the City Manager the power to select subordinate staff. In April 2011, Kevin Donnelly retired from the City as Fire Chief. Since that time, the Fire Department has not had a permanent chief.

Recruitment of a permanent chief began after Mr. Donnelly's retirement. Following the screening of 48 candidates and interviews with eight, additional interviews were conducted to determine the best person to fill the vacancy. Lawrence R. Rooney, a Deputy Chief with the Peoria, Arizona Fire Department, was selected. He began his public safety career in 1984 with the same department.

The City Manager wishes to provide certain terms and conditions related to employment that extend beyond the Manager's authority and therefore, require ratification by the City Council. The proposed agreement is an "at-will" agreement and contains a base salary of \$145,000 annually, six-month severance payment for termination other than cause, and benefits similar to what other executive management employees enjoy, including the payment of his full 9 percent employee's share for retirement contribution. A copy of the agreement is attached.

**FISCAL IMPACT:** The position is within budget.

---

Konradt Bartlam  
City Manager

Attachment

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

RESOLUTION NO. 2011-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
RATIFYING THE EMPLOYMENT AGREEMENT  
BETWEEN THE CITY MANAGER AND FIRE CHIEF  
LAWRENCE R. ROONEY

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby ratify the Employment Agreement entered into between the City Manager and Fire Chief Lawrence R. Rooney, as shown on Exhibit A attached.

Date: November 16, 2011

=====

I hereby certify that Resolution No. 2011-\_\_\_\_\_ was passed and adopted by the Lodi City Council in a regular meeting held November 16, 2011, by the following vote:

AYES: COUNCIL MEMBERS –  
NOES: COUNCIL MEMBERS –  
ABSENT: COUNCIL MEMBERS –  
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2011-\_\_\_\_\_

**EMPLOYMENT AGREEMENT****Executive Management  
Exempt Service****Fire Chief**

**THIS AGREEMENT** entered into on \_\_\_\_\_, by and between the CITY OF LODI, a municipal corporation (hereinafter referred to as "City") and Lawrence R. Rooney, an individual (hereinafter referred to as "Employee").

**WHEREAS**, City desires to employ the services of Employee as Fire Chief; and

**WHEREAS**, Employee desires to serve as Fire Chief for the City beginning December \_\_\_\_\_, 2011; and

**WHEREAS**, City and Employee agree in writing to the terms and conditions of employment as Fire Chief; and

**WHEREAS**, Employee and City agree and acknowledge that Employee's employment as Fire Chief is his sole and exclusive employment with City, and that their employment relationship is governed solely and exclusively by this Agreement.

**NOW, THEREFORE**, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

**1. Employment:** City agrees to employ Employee as Fire Chief, in accordance with the following provisions:

(a) Employee shall serve as Fire Chief, and shall be responsible for managing and directing the operations of the Fire Department.

(b) Employee shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the City.

(c) Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall comply fully with his reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission (FPPC).

(d) Employee agrees to remain in the exclusive employ of the City during the term of this Agreement. Employee shall dedicate his full energies and qualifications to his employment as Fire Chief, and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Manager.

**2. Maintenance of Professional Expertise:** To promote continued professional growth and benefit to the City, Employee shall, at City expense and consistent with budgetary constraints: maintain professional licenses and certifications, maintain membership in



professional organizations related to Fire administration and related professional disciplines; attend workshops, seminars and other similar activities designed to advance Employee's professional development; and, represent the City in professional associations and other organizations.

**3. Resignation or Termination:**

(a) Employee may resign at any time and agrees to give City at least 30 days advance written notice of the effective date of his resignation. In such event, Employee shall not be entitled to the severance pay referenced in Paragraph 4 herein.

(b) The parties recognize and affirm that Employee may be terminated by the City Manager with cause, which shall mean gross insubordination, incapacity, dereliction of duty, conviction of any felony or any crime involving acts of moral turpitude or involving personal gain to him, or material breach of this Agreement. In such event, Employee shall not be entitled to the severance pay referenced in Paragraph 4 herein.

(c) The parties recognize and affirm that Employee may be terminated by the City Manager without cause. In that event, and only in that event, Employee shall be entitled to severance pay as provided in Paragraph 4 herein.

(d) In the event of termination and in recognition of Employee's professional status and integrity, Employee and the City Manager shall prepare a joint public statement to be made by the City Manager. This employment relationship is based on the mutual respect between the parties and a desire to maintain the highest degree of professionalism. In communicating with third parties about the parties' employment relationship and the circumstances under which it may have been severed, the parties shall (a) protect and advance their mutual respect and professionalism, and (b) refrain from making statements that would negatively impact either party.

(e) Employee may choose to resign or retire his office instead of being terminated if agreed to by the City Manager. In such an event the public announcement, as provided for in Paragraph 3 (d) above, will note Employee has resigned or retired. The provisions of Paragraph 3 (d) shall remain applicable. In such event, Employee shall not be entitled to the severance pay referenced in Paragraph 4 herein.

**4. Severance Pay:** If Employee is terminated by the City Manager without cause while still willing and able to perform the duties of Fire Chief, City agrees to pay Employee a cash payment equal to six (6) months' aggregate salary and the City's cost of six (6) months' health insurance benefits only (no other benefits will be accrued or converted to a cash equivalent) subject to reduction as set forth in this Paragraph 4. The severance payment will be paid in installments coinciding with the City's regular paydays during the severance period and subject to customary withholdings. In the event Employee retains new employment during the six-month severance period, any remaining severance payment will be forfeited as of the date Employee begins his new employment. To be eligible for such severance pay, Employee shall fulfill all of his obligations under this Agreement, and shall sign an Acknowledgment and Release of Claims against the City in a form acceptable to the City Attorney. Payment under this Paragraph 4 will release City from any further obligations under this Agreement, or any other transaction between the parties.

5. **Employment as Department Head is Sole Employment with City:** Employee further represents and acknowledges that his employment as Fire Chief is his sole and exclusive employment with the City. Employee has no right to any other exempt position with the City or to any employment in the classified service.

6. **Salary:**

a. City agrees to pay Employee \$145,000.00 in salary per year for his services, payable in installments at the same time as other employees of the City are paid and subject to customary withholding. The City may reduce base salary compensation or other financial benefits of Employee as part of general salary reduction in pay among and common to all employees. In addition, Employee shall pay nine percent (employee's share) of his salary towards the California Public Employees Retirement system benefit. Currently, the City has instituted and Employee agrees to accept the following three reductions:

- i) Employee agrees to forego all deferred compensation matches he would otherwise be entitled to.
- ii) Employer will contribute the full cost (minus the Employee's Share) of the lowest cost PERS HMO Medical Plan available to employees (excluding Porac) toward Employee's selected PERS health care provider between the pay periods in which January 1, 2012 through June 30, 2012 fall. The lowest cost medical plan will be the lowest cost plan for San Joaquin County residents as of January 2012 for Employee's coverage category of: a) employee, b) employee plus one, or c) family. If Employee selects a higher cost plan, Employee will pay the difference (and the Employee's Share) as a payroll deduction. The Employee's Share shall be \$0.00 for the employee only coverage category, \$80.00 per month for employee plus one and \$104.00 per month for family.
- iii) Employee agrees to forego the ability to cash out 20 of the 40 hours of the Administrative Leave that would otherwise be cashable pursuant to Article IX of the Executive Management Statement of Benefits.

b. At any time, a minimum of a ten percent (10%) salary differential shall exist between the Fire Chief and the department's next highest paid executive or mid management position, including incentive pay. In addition, the City Manager will have discretion to grant up to an additional five percent in salary after six months of employment, and subject to a satisfactory performance evaluation.

7. **Benefits:** The City shall provide Employee the same benefits as provided to management employees in accordance with the terms of the Executive Management Statement of Benefits dated 1998 and as they may be amended, increased or decreased, except as modified herein. These are the sole and exclusive benefits to be provided to Employee. Any improvement or modification of such benefits may only be made by written instrument signed by the City Manager. Employee's vacation leave shall be calculated based upon fifteen years of service accumulated and as provided in the Executive Management Statement of Benefits (8.2). As used herein, benefits include, but are not limited to: vacation, sick leave, holidays, administrative leave, retirement, vision insurance, health insurance, dental insurance, long term

disability insurance and life insurance. Employee will also earn and accumulate sick leave at the rate of 12 days per year notwithstanding the 10 day provision in the Executive Management Statement of Benefits. Employee shall be granted an eighty (80) hour vacation/sick leave bank that can only be used during Employee's first 12 months of employment. This secondary bank shall expire upon Employee's first anniversary with the City.

**8. Performance Evaluation:** The City Manager shall review and evaluate the performance of Employee each year and set goals and objectives for the ensuing year. Such review and evaluation shall be in accordance with specific criteria developed in the performance plan in consultation with Employee and the City Manager.

**9. Assignment:** Employee shall not assign any of the duties and responsibilities, or obligations of this Agreement except with the express written consent of the City Manager.

**10. Authority to Work in the United States:** Employee represents, under penalty of perjury, that he is authorized to work in the United States. In accordance with §274A (8 USC 1324) of the Immigration Reform and Control Act of 1986 before this Agreement can become effective, Employee must provide documentary evidence to City consistent with the Act, that he is legally entitled to work in the United States, and must execute the verification required by that Act.

**11. Cell Phone/Vehicle/Uniform Allowance:** Employee will be provided with a Cell Phone for employment related use at the City's expense on terms consistent with other Executive Managers. Employee will also be provided with a vehicle for work related use. Employee will also be provided with a reimbursement for total cost of one complete Class A Fire Chief Uniform and four working uniforms that will not recur in any subsequent renewals of this contract.

**12. Moving and Relocation Expenses:** Employee will be reimbursed for any moving or relocation expenses related to accepting the fire chiefs position not to exceed \$5,000 total.

**13. Notice:** All notices required herein shall be sent first class mail to the parties as follows:

To **CITY:** Konradt Bartlam, City Manager  
City of Lodi  
P. O. Box 3006  
Lodi, CA 95241-1910

To **EMPLOYEE:** Lawrence R. Rooney  
8351 W. Maya Drive  
Peoria, AZ 85383

Notice shall be deemed effectively served upon deposit in the United States mail.

**14. Entire Agreement:** This Agreement contains the entire agreement between the parties hereto. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied on by any party hereto. This Agreement may only be amended by written instrument signed by Employee and the City Manager and specifically approved by the City Council in open session.

**15. Severability:** If any provision of this Agreement is invalid or unenforceable, it shall be considered deleted herefrom and the remainder of this Agreement shall be unaffected and shall continue in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year written above.

CITY OF LODI, a municipal corporation

EMPLOYEE

\_\_\_\_\_  
Konradt Bartlam  
City Manager

\_\_\_\_\_  
Lawrence R. Rooney

ATTEST:

By: \_\_\_\_\_  
Randi Johl, J.D.  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
D. Stephen Schwabauer  
City Attorney





## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Authorizing the City Manager to Amend the Energy Efficiency Financing Program

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Electric Utility Director

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**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Manager to amend the Energy Efficiency Financing Program.

**BACKGROUND INFORMATION:** In October 2010, the City Council approved a pilot project for an energy efficiency financing program, also referred to as on-bill financing. This established a loan fund in the amount of \$250,000 for G2 electric utility customers' energy efficiency/conservation projects. In May 2011, the City Council authorized an additional \$150,000 as well as G3, G4, G5 and I1 utility rate customers.

To date, eight (8) commercial/industrial customers have secured an interest-free, 24-month loan for designated and approved energy efficiency measures. These businesses include: Delta Rehabilitation, Wine & Roses, M & R Packing, Pacific Coast Producers, Quashnick Tools, Heartland Steel, Kettleman Lane Chevron, and Specialty Commodities. Of the \$400,000 available in this program, a total of \$278,955.75 has been loaned to these eight aforementioned businesses. Another \$69,101 is currently reserved, as the energy efficiency projects are pending installation/completion by years end.

Staff recommends expanding the program to include non-residential customers assigned to the G-1 electric utility rate tariff.

Also of note, all outstanding loans continue to be paid on time, each month. This continues the "cycle" of loan funds: as loan amounts are paid each month, the total available loan balance is replenished. This allows the City to offer additional loans to those customers who meet the set eligibility guidelines.

**FISCAL IMPACT:** The electric utility will, over time, continue to see decreased energy sales as a result of the customer-implemented energy efficiency/conservation measures.

**FUNDING:** Included in FY2011/12 Budget Account No. 164.1420.

\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Service Director

\_\_\_\_\_  
Elizabeth A. Kirkley  
Electric Utility Director

**PREPARED BY:** Rob Lechner, Manager, Customer Service & Programs

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

RESOLUTION NO. 2011-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING  
THE CITY MANAGER TO AMEND THE ENERGY EFFICIENCY  
FINANCING PROGRAM

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WHEREAS, in October 2010, the City Council approved a pilot project for an energy efficiency financing program, also referred to as on-bill financing, which established a loan fund in the amount of \$250,000 for G2 electric utility customers' energy efficiency/conservation projects; and

WHEREAS, in May 2011, the City Council authorized an additional \$150,000 as well as G3, G4, G5 and I1 utility rate customers; and

WHEREAS, to date, eight (8) commercial/industrial customers have secured an interest-free, 24-month loan for designated and approved energy efficiency measures; and

WHEREAS, to date a total of \$278,955.75 has been loaned to eight businesses and \$69,101 is currently reserved as the energy efficiency projects are pending installation/completion by years end; and

WHEREAS, staff recommends expanding the program to include non-residential customers assigned to the G-1 electric utility rate tariff, thus incorporating all non-residential customers in this program.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to amend the Energy Efficiency Financing Program by including G-1 commercial/industrial customers.

Dated: November 16, 2011

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I hereby certify that Resolution No. 2011-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2011, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2011-\_\_\_\_\_



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Receive Report Regarding Communications Pertaining to the California High-Speed Rail Authority and American Recovery and Reinvestment Act Funding

**MEETING DATE:** November 16, 2011

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Receive report regarding communications pertaining to the California High-Speed Rail Authority and American Recovery and Reinvestment Act (ARRA) funding.

**BACKGROUND INFORMATION:** The City received a request for communication from the City of Merced regarding a pre-expenditure request that is critical for the preservation of ARRA funding as it relates to high-speed rail.

The communication essentially does the following three things:

- (1) The request asks the Director of the California Department of Finance to approve the California High-Speed Rail "pre-expenditure request" before them so that the ARRA and State funding is not jeopardized.
- (2) Reiterates support for the Central Valley high-speed rail as the essential core segment of a viable high-speed rail system in California given that the segment supports speeds of 220 miles per hour and will deliver jobs and future access to a part of the State that could use a serious economic boost.
- (3) Reiterates support for the Merced to Bakersfield section as the first phased implementation of the statewide system that meets operational independence requirements and maximizes the funding by connecting a high-speed system to commuter and passenger rails that can go all the way to Oakland and San Francisco in the north and San Diego to the south.

Based upon prior high-speed rail support positions taken by the City of Lodi, the communication was signed by the Mayor and sent out by the October 31, 2011 deadline as requested.

This report is provided for informational purposes only.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** Not applicable.

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Randi Johl  
City Clerk

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

CITY COUNCIL

BOB JOHNSON, Mayor  
JOANNE MOUNCE,

Mayor Pro Tempore  
LARRY D. HANSEN  
PHIL KATZAKIAN  
ALAN NAKANISHI

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6702 / FAX (209) 333-6807  
[www.lodi.gov](http://www.lodi.gov)      [cityclerk@lodi.gov](mailto:cityclerk@lodi.gov)

KONRADT BARTLAM,  
City Manager

RANDI JOHL, City Clerk

D. STEPHEN SCHWABAUER  
City Attorney

October 31, 2011

The Honorable Jerry Brown  
Governor, State of California  
State Capitol, First Floor  
Sacramento, California 95814  
(Via Facsimile: (916) 558-3177)

Director Ana J. Matosantos  
California Department of Finance  
915 L. Street  
Sacramento, California 95814  
(Via Facsimile: (916) 323-0060)

SUBJECT:    **CALIFORNIA HIGH-SPEED RAIL AUTHORITY**

Dear Governor Brown and Director Matosantos:

We are pleased to continue our long time support of the proposed California high-speed rail system. We have worked diligently in our partnership with the California High-Speed Rail Authority (Authority) as it seeks to build a transformational statewide public infrastructure project in California. We believe through collaboration, best practices, political will and good communication, the California high-speed rail system will enhance the lives of our residents and provide continued economic growth for our communities.

The purpose of this letter is to express our concern that the federal American Recovery and Reinvestment Act (ARRA) allocation of \$3.3 billion dollars to begin the development and construction of high-speed rail in California is in jeopardy. This is based on the strict deadlines for expenditures required by the ARRA regulations, the U.S. Department of Transportation and Federal Railroad Administration. They have clearly stated that the beginning of construction must occur by September 2012 and be completed by September of 2017. Failure to meet these deadlines jeopardizes the \$3.3 billion dollars in federal funding, the \$3 billion in matching funding from Proposition 1A, and more than the 120,000 jobs scheduled to begin next year.

The Director of the California Department of Finance is being asked to review and approve the "pre-expenditure request" relative to the preliminary right-of-way acquisition activities for the California high-speed rail system. The preliminary right-of-way acquisition activities are a required step before construction can begin. Therefore, one delay in this complex process can threaten the overall project funding. We are respectfully requesting that the Director of the California Department of Finance approve



the California high-speed rail "pre-expenditure request" so that the federal ARRA and State funds are not jeopardized.

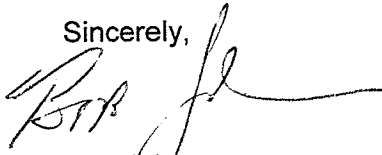
The Authority must complete many tasks before construction of the project may begin, including planning, preliminary design, environmental review, final design, right-of-way acquisition and utility relocation. The Authority is currently in the planning and environmental review phases. In fact, comments for the draft environmental impact report for the Merced to Fresno and Fresno to Bakersfield sections were due on October 13<sup>th</sup>. It is our understanding that the Authority expects to designate the preferred northern alignment in December 2011 and to receive final state and federal approval for this portion of the project in April of 2012.

As determined by federal and state officials, the Central Valley segment of the high-speed rail system is the essential core given that it is the only segment that can support speeds of 220 miles per hour in the first phase of the system. The Central Valley segment is also supported because it provides future access to a part of the State that needs a serious economic boost. Additionally, the Merced to Bakersfield segments meet the required operational independence requirements and maximize the funding allocated to California by connecting the high-speed rail system to existing commuter and passenger rail. When the Merced to Bakersfield segment is implemented, it has the potential to travel to San Jose and San Francisco (once ACE is extended from Stockton to Merced) in the north and Palmdale to the south given the current passenger rail commuter trains. For being the first buildable piece of the statewide system, the Central Valley segment can be fully maximized by utilizing existing commuter rail through existing and new transportation partnerships.

We know there has been and will continue to be numerous attacks on the proposed high-speed rail system. This is expected for a project of this magnitude. But we would be remiss if we did not remind you of the incredible economic, commerce and transportation benefits that high-speed rail will bring to this state.

In closing, we urge you to approve the high-speed rail "pre-expenditure request" so that the Federal ARRA and State funds are not jeopardized. We further commit to working with your administration and the Authority in implementing a world class high-speed rail system that creates badly needed jobs, and connects the various regions of our beautiful state.

Sincerely,



Bob Johnson  
Mayor

C: File

## **ARRA Deadline for \$3.3 Billion of Federal High-Speed Rail Funds**

### **Merced to Bakersfield Segment**

#### **Bullets/Talking Points for Letters and Advocacy Efforts**

**Last Updated October 28th, 2011**

#### **Issue:**

The American Recovery and Reinvestment Act (ARRA) allocated \$3.3 billion dollars in federal funding to begin the development and construction of high-speed rail in California. This funding has a September 2012 deadline for beginning construction in order to meet the September 2017 construction deadlines. Failure to meet these federal deadlines, will result in the loss of more than the \$3.3 billion dollars in federal funding, \$3 billion dollars in matching funds from Proposition 1A, and more than 120,000 jobs scheduled to begin next year. In a letter from May of 2011, the U.S. Department of Transportation clearly states that they "have no administrative authority to change this deadline and do not believe it is prudent to assume Congress will change it."

The Director of the Department of Finance is being asked to review and approve the "pre-expenditure request" relative to the preliminary right-of-way- acquisition activities for the California High-Speed Rail system. The preliminary right-of-way acquisitions activities are a required step before construction can begin. Therefore, one delay in this complex process can threaten the project funding. The issue in front of the Department of Finance is to approve or not to approve the "pre-expenditure request (funds)." This decision will be made shortly and therefore time is of the essence to gather support letters and advocate to the Governor and the Director of the Department of Finance to approve the "pre-expenditure request (funds)" so as not to endanger the start of the construction delays in the availability to have the right-of-way procured in advance of the contractors beginning construction.

For clarity, the "pre-expenditure request" consists of Proposition 1A funds and ARRA funds; no California general fund dollars are being requested.

#### **What is the Ask?**

There are three asks/statements that should be made to the Governor and the Director of the California Department of Finance:

1. To request that the Director of the California Department of Finance approve the California High-Speed Rail "pre-expenditure request" before them so that the ARRA and State funding is not jeopardized.
2. Reiterate your support for the Central Valley high-speed rail as the essential core segment of a viable high-speed rail system in California given that this segment supports speeds of 220 miles per hour and will deliver jobs and future access to a part of the State that could use a serious economic boost.
3. State your support for the Merced to Bakersfield section as the first phased implementation of the statewide system that meets operational independence requirements and maximizes the funding by connecting a high-speed system to commuter and passenger rails that can go all the way to Oakland and San Francisco in the north and San Diego to the south.

**Critical Points:**

- The US Department of Transportation federal funding requires the State's matching funds, hence the importance of approving the "pre-expenditure request."
- Withholding or delaying authorization of the State funds puts California's high-speed rail project in serious jeopardy.
- Under federal law, the High-Speed Rail Authority must spend all of the ARRA funds it has been awarded by September 2017. However, there are many tasks which must be completed before construction may begin. These include planning, preliminary design, environmental review, final design, right-of-way acquisition, and utility relocation.
- The HSR project is currently in the planning and environmental review phases.
- A draft environmental impact report has been released for the northern portion of the initial construction segment from Merced to Fresno.
- The High-Speed Rail Authority expects to designate the preferred northern alignment in December 2011 and to receive final state and federal approval for this portion of the project in April 2012.
- A revised draft environmental report for the southern portion, which runs from Fresno towards Bakersfield, is expected to be released in early 2012.
- The High-Speed Rail Authority expects to designate the preferred southern alignment in August 2012 and to receive final state and federal approval in December 2012. After receiving environmental approval and resolving all legal challenges to the project, the Authority would begin acquiring parcels in the right of way and request proposals from engineering firms for the design-build contracts for the initial construction segment from Merced to Bakersfield.



# CITY OF LODI

## COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Set Public Hearing for December 21, 2011, to Consider Adopting Resolution Setting Pre-Approved Engineering News Record Adjustment Index for Usage-Based and Flat Water Rates

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Set public hearing for December 21, 2011 to consider adopting resolution setting pre-approved Engineering News Record adjustment index for usage-based and flat water rates.

**BACKGROUND INFORMATION:** The City Council has made numerous water rate decisions over the past few years, as summarized below. The recommended action at the December 21, 2011, City Council meeting will be to implement a rate increase of 2.2 percent effective January 1, 2012, as presented in Exhibit A.

On May 20, 2009, Council waived the Consumer Price Index (CPI) adjustment of water rates based upon a lack of new information supporting neither an increase nor a decrease. On January 6, 2010, Council received advisory usage-based water rates for the purpose of research and customer billing comparisons. On July 21, 2010, Council approved a change to the date for implementing the annual rate adjustment to January 1 for each of the five years (maximum timeframe allowed by Proposition 218) following January 1, 2011. This change was recommended so that rate changes occur at the lowest usage time of the year. Council also changed the water rate adjustment index from the CPI to the Engineering News Record (ENR), effective January 1, 2012, because this index better reflects the combined inflationary effects of personnel, materials and energy costs on the total operations of the utility, as was done for the Wastewater Rates on July 15, 2010.

Council approved a professional services agreement with The Reed Group on August 6, 2008, for the preparation of a water utility financial model. The model has been used to forecast the performance of the utility through FY 2019/20 while incorporating substantial capital investments, including the surface water treatment facilities, water meter program, infrastructure replacement program, property owner meter payments and PCE/TCE remediation costs. The recommended rates presented in Exhibit A were developed using this tool.

While the ENR-based adjustment for the period October 2010 through October 2011 is 2.53 percent, the model forecast works with an increase of just 2.2 percent, as was presented in the current copy recently sent to Council. It is staff's recommendation that the water rate increase be 2.2 percent rather than the actual ENR-based increase of 2.53 percent. For a resident still on the flat rate, the monthly charge for a three-bedroom home will increase from \$41.09 to \$41.99. A metered resident using 1,500 cubic feet of water per month will see an increase from \$38.10 to \$38.95.

**FISCAL IMPACT:** Increased revenues to the water utility are required to keep up with cost of service increases and new mandated costs.

**FUNDING AVAILABLE:** Not applicable.

\_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

Prepared by Rebecca Areida-Yadav, Management Analyst  
Attachment  
cc: Steve Mann, Information Systems Manager

Charlie Swimley, Deputy Public Works Director – Utilities

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

**Exhibit A****City of Lodi -- Water Utility****Current and Proposed Water Rates**

		<b>Current (1)</b>	<b>Jan. 2012</b>
<b>Flat Rates (\$/month)</b>			
<b>Percent Increase</b>			2.2%
<b>Single Family Residential Unit (\$/month)</b>			
1 Bedroom	\$	28.54	\$ 29.17
2 Bedroom	\$	34.28	\$ 35.03
3 Bedroom	\$	41.09	\$ 41.99
4 Bedroom	\$	49.37	\$ 50.46
5 Bedroom	\$	59.22	\$ 60.52
6 Bedroom	\$	71.06	\$ 72.62
7 Bedroom	\$	85.25	\$ 87.13
<b>Multi-Family Residential Unit (\$/month)</b>			
1 Bedroom	\$	24.50	\$ 25.04
2 Bedroom	\$	29.39	\$ 30.04
3 Bedroom	\$	35.26	\$ 36.04
<b>Metered Water Rates</b>			
<b>Service Charge (\$/month)</b>			
<i>Single Family Residential (2)</i>			
Up to 3/4" Meter	\$	22.70	\$ 23.20
1" Meter	\$	36.85	\$ 37.66
1 1/2" Meter	\$	72.00	\$ 73.58
2" Meter	\$	114.35	\$ 116.87
<i>Multi-Family and Non-Residential (3)</i>			
5/8" Meter	\$	22.70	\$ 23.20
3/4" Meter	\$	22.70	\$ 23.20
1" Meter	\$	36.85	\$ 37.66
1 1/2" Meter	\$	57.50	\$ 58.77
2" Meter	\$	71.85	\$ 73.43
3" Meter	\$	100.60	\$ 102.81
4" Meter	\$	129.35	\$ 132.20
6" Meter	\$	186.80	\$ 190.91
8" Meter	\$	244.30	\$ 249.67
10" Meter	\$	301.75	\$ 308.39
<b>Water Usage Rates (\$/CCF)</b>			
<i>Single Family Residential (2)</i>			
Tier 1 - 0 to 10 CCF/month	\$	0.88	\$ 0.90
Tier 2 - 11 to 50 CCF/month	\$	1.32	\$ 1.35
Tier 3 - Over 50 CCF/month	\$	1.74	\$ 1.78
<i>Multi-Family and Non-Residential</i>			
All Water Usage	\$	0.88	\$ 0.90

**Comments by the public on non-agenda items**

**THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.**

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

**Comments by the City Council Members on non-agenda items**



TM

## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Public Hearing to Consider Unmet Transit Needs in Lodi

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Public Works Director

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**RECOMMENDED ACTION:** Public hearing to consider unmet transit needs in Lodi.

**BACKGROUND INFORMATION:** The San Joaquin Council of Governments (SJCOG) is required to conduct an annual assessment of the existing transit system prior to the allocation of Local Transportation Funds for non-transit purposes (TDA Section 99401.5). SJCOG, the San Joaquin Regional Transit District, and local jurisdictions are sponsoring several upcoming Unmet Transit Needs hearings in San Joaquin County, including Lodi. Any comments received from those meetings will be communicated to City staff. It should be noted that many of the comments are given directly via email to SJCOG staff throughout the year.

Unmet Transit Needs are defined as transportation services not currently provided to those residents who use or would use public transportation regularly, if available, to meet their life expectations. SJCOG's Social Services Transportation Committee (SSTAC) will evaluate the comments received based on a reasonableness test of six criteria. The criteria include community acceptance, equity, potential ridership, cost effectiveness, operational feasibility, and funding. The funding criterion requires the imposed service does not cause the public agency to incur expenses in excess of the maximum allocation of TDA funds. Completion of the Draft Unmet Transit Needs study is tentatively scheduled for February 2012 with adoption of the Final Unmet Transit Needs study in April 2012.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** None required.

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F. Wally Sandelin  
Public Works Director

Prepared by Paula J. Fernandez, Transportation Manager/Senior Traffic Engineer

FWS/PJF/pmf

cc: Tanisha Taylor, San Joaquin Council of Governments  
Aaron Hoyt, San Joaquin Council of Governments

---

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager





***Please immediately confirm receipt  
of this fax by calling 333-6702***

CITY OF LODI  
P. O. BOX 3006  
LODI, CALIFORNIA 95241-1910

**ADVERTISING INSTRUCTIONS**

**SUBJECT: PUBLIC HEARING TO CONSIDER UNMET TRANSIT NEEDS IN  
LODI**

**PUBLISH DATE: SATURDAY, NOVEMBER 5, 2011**

**LEGAL AD**

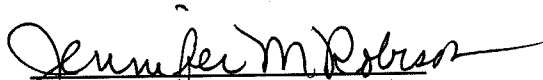
**TEAR SHEETS WANTED: One (1) please**

**SEND AFFIDAVIT AND BILL TO:  
LNS ACCT. #0510052**

RANDI JOHL, CITY CLERK  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910

**DATED: THURSDAY, NOVEMBER 3, 2011**

**ORDERED BY: RANDI JOHL  
CITY CLERK**

  
JENNIFER M. ROBISON, CMC  
ASSISTANT CITY CLERK

MARIA BECERRA  
ADMINISTRATIVE CLERK

**Verify Appearance of this Legal in the Newspaper – Copy to File**

LNS	Faxed to the Sentinel at 369-1084 at _____ (time) on _____ (date) _____ (pages)
	Phoned to confirm receipt of all pages at _____ (time) _____ CF _____ MB _____ JMR (initials)



## **DECLARATION OF POSTING**

### **PUBLIC HEARING TO CONSIDER UNMET TRANSIT NEEDS IN LODI**

On Thursday, November 3, 2011, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider unmet transit needs in Lodi (attached and marked as Exhibit A) was posted at the following locations:

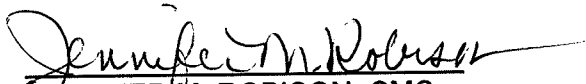
Lodi Public Library  
Lodi City Clerk's Office  
Lodi City Hall Lobby  
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2011, at Lodi, California.

ORDERED BY:

**RANDI JOHL**  
**CITY CLERK**

  
**JENNIFER M. ROBISON, CMC**  
**ASSISTANT CITY CLERK**

\_\_\_\_\_  
**MARIA BECERRA**  
**ADMINISTRATIVE CLERK**



## CITY OF LODI

Carnegie Forum  
305 West Pine Street, Lodi

## NOTICE OF PUBLIC HEARING

Date: November 16, 2011

Time: 7:00 p.m.

For information regarding this notice please contact:

**Randi Johl,**  
City Clerk

Telephone: (209) 333-6702

**EXHIBIT A**

### NOTICE OF PUBLIC HEARING

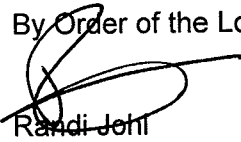
**NOTICE IS HEREBY GIVEN** that on **Wednesday, November 16, 2011**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

**a) Unmet transit needs in Lodi.**

Information regarding this item may be obtained in the Public Works Department, 221 West Pine Street, Lodi, (209) 333-6706. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2<sup>nd</sup> Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

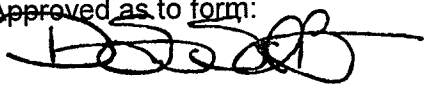
If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

  
Randi Johl  
City Clerk

**Dated: November 2, 2011**

Approved as to form:

  
D. Stephen Schwabauer  
City Attorney



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Public Hearing to Consider Adopting Resolution Confirming the 2012 Annual Report and Levy of Assessments Within the Lodi Tourism Business Improvement District (LTBID)

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Deputy City Manager

---

**RECOMMENDED ACTION:** Public hearing to consider adopting resolution confirming the 2012 Annual Report and levy of assessments within the Lodi Tourism Business Improvement District (LTBID).

**BACKGROUND INFORMATION:** In accordance with California Streets and Highway Code Sections 36500 and 36524, the Annual Report of the LTBID has been approved by the City Council. A public hearing is required to hear protests and to receive testimony regarding the levy of and collection of a 3 percent Tourism Promotion Business Assessment for the benefit of the LTBID. Staff recommends approval of the levy of the assessment.

**FISCAL IMPACT:** Funding for Visit Lodi! generates additional funding for local merchants and the City as tourism dollars are spent locally.

**FUNDING:** Not applicable.

---

Jordan Ayers, Deputy City Manager

---

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



October 21, 2011

Randi Johl  
City of Lodi  
221 W. Pine St.  
Lodi, CA 95240

Dear Ms. Johl,

Enclosed please find the 2012 Annual Report for the Lodi Tourism Business Improvement District (LTBID) which was established October 6, 2004 by City Ordinance 1753 and was amended 11/19/2008 by Resolution No. 2008-229.

Enclosed you will find a 2012 work plan, budget and method of assessment as required by the California Streets and Highways Code #33650. Please note there are no suggested changes to the District at this time.

I plan to make a presentation to the Council at the November 2, 2011 City Council meeting. Please feel free to call me with any questions you may have.

Sincerely,

Nancy Beckman  
President and CEO

## **2012 Lodi Tourism Business Improvement District Annual Report**

**Assessment Funding Purpose:** To administer marketing programs to promote the City of Lodi as a tourism destination and to fund projects, programs, and activities that benefit hotels within the Business Improvement District boundaries

**Method of Assessment:** The LTBID includes all hotels/lodging facilities within the City of Lodi as well as two properties currently located at the intersection of Kettleman Ln. and I-5. Each lodging facility within the district shall be assessed 3% of the gross room rental revenue. Rentals (stays) lasting over 30 days are not subject to the assessment. The assessment is levied annual and collected quarterly.

### **2012 Work Plan (See Attached)**

For the purpose of the Annual Report presentation, we have broken our 2012 work plan into 6 project areas:

- Marketing/Promotional Activities
- Research
- Customer Service & Hospitality
- Events
- Communications
- Committees

### **2012 Budget**

<b>G/L Account</b>	<b>2012</b>
Income - BID	\$252,252.00
Income-City of Lodi	\$84,000.00
Income-Community Book	\$3,500.00
Income-Taste of Lodi	\$49,500.00
Income - Tourism Lunch	\$6,500.00
Income-postage donations	\$15.00
Income - Ares booking engine	\$25.00
Income-website advertising	\$500.00
Attraction Map - dining ads	\$1,000.00
<b>Total Income</b>	<b>\$397,292.00</b>

Advertising	\$38,492.00
Automobile Expense	\$4,064.00
Bank Service Charges	\$450.00
Contingencies/Unexpected Opportunities	\$4,935.00
Dues & Subscriptions	\$3,505.00
Education/Conferences	\$875.00
Equipment Lease	\$3,760.00
Event Expenses - Taste of Lodi	\$49,500.00
Event Expenses - Tourism Lunch	\$6,152.00
Gifts	\$200.00

Hospitality/Meals	\$1,465.00
<u>Insurance</u>	
Directors & Officers	\$1,600.00
Liability	\$588.00
Work Comp	\$1,225.00
Labor - Contract	\$1,000.00
<u>Office Expenses</u>	
Equipment	\$1,000.00
Maintenance	\$2,200.00
Supplies	\$1,309.00
<u>Personnel</u>	
Salaries	\$145,320.00
Benefits	\$10,464.00
Postage & Delivery	\$2,413.00
Printing & Reproduction	\$1,175.00
<u>Professional Fees</u>	
Accounting	\$3,580.00
Administration-City of Lodi	\$12,613.00
Legal Fees	\$250.00
Promotion	\$48,615.00
Rent	\$18,776.00
<u>Repairs</u>	
Computer Repairs	\$800.00
<u>Tax &amp; License</u>	
Payroll	\$12,250.00
Property	\$2,362.00
Licenses	\$70.00
Technology	\$3,780.00
Telephone	\$1,900.00
Trade Shows	\$5,620.00
<u>Travel &amp; Entertainment</u>	
Meals	\$790.00
Travel	\$2,094.00
Utilities - Gas & Electric	\$2,100.00
<b>Total Expense</b>	<b>\$397,292.00</b>

<b>Net Profit (Loss)</b>	<b>\$0.00</b>
--------------------------	---------------

**Visit Lodi!**  
**Conference & Visitors Bureau**  
**2012 Work Plan**



## **Marketing/Promotion Activities**

### **Leisure Market**

Targeted Advertising: Ads will be placed in designated target markets including the greater Sacramento, greater Bay Area and Northern California region to promote Lodi. Ads will be both hard copy and digital in nature and will include a response measure for tracking purposes wherever possible.

Trade Shows: Visit Lodi! will have a booth at the 2012 Bay Area Travel Show and Treasure Island Winefest. Staff will actively promote and recruit partners to participate as vendors where possible as a way to have a greater presence at the shows while increasing visibility and promotional opportunity for Lodi. All leads will be tracked and a database of contacts will be maintained for future marketing opportunities.

Visit Lodi! will partner with the Central Valley Tourism Association to promote and represent Lodi at the Los Angeles Times Travel Show. In addition, Visit Lodi! will research promotional opportunities at various wine shows in the Northern California region.

LodiView: Visit Lodi! will continue to offer LodiView as a monthly e-publication highlighting Lodi events and activities of interest to the tourist. LodiView distribution is currently at over 4,000 subscribers.

Quarterly e-postcards: In 2012 Visit Lodi! will produce quarterly e-postcards that will be mailed to our marketing database. Each postcard will feature a call to action and will give recipients the ability to click through to the Visit Lodi! website for special offers and other Lodi visitor information.

Social Media: Staff will utilize social media (Facebook & Twitter) a minimum of twice a week to promote Lodi events and businesses. Staff proposes to utilize contests and give-a-ways as a way to increase followers.

### **Group Market**

Tradeshows: Visit Lodi! will attend three sales shows created for the group market: The California Society of Association Executives (Cal SAE), the Northern California Chapter of Meeting Professionals International Annual Expo, and Society of Government Meeting Planners (SGMP). All sales leads will be followed up on and added to our database for future marketing opportunities.

Visit Lodi! will partner with the Central Valley Tourism Association to promote and represent Lodi at POW WOW and the International Tour Management Institute.

Fam Tours: Visit Lodi! Group Sales Manager will host quarterly Fam Tours for meeting planners and group decision makers as a tool to showcase Lodi as a group meeting destination.

Direct Mail Campaign: Quarterly fliers/brochures will be sent to group sales decision makers to reinforce the vision of Lodi as a go-to destination for meetings/conferences/events. Quarterly mailers will keep Lodi top-of-mind for meeting planners, association leaders and social/fraternal groups.

Local Host Program: In 2012, the Group Sales Manager will make 12 presentations to local social groups and service clubs to promote the Host-at-Home Program. When appropriate, the Host-at-Home Award will be given out at the Annual Tourism Luncheon as a way to generate group sales leads by 1.) reminding citizens and local leaders as to the benefits of bringing their groups to Lodi, and 2.) recognizing individuals who participate in the program by referring groups to Visit Lodi! sales staff.

Sales Calls: A minimum of two days a month sales staff will make face-to-face sales appointments in the Northern California and greater Bay Area region to sell group decision makers on bringing their group events and meetings to Lodi. Additionally, sales staff will utilize cold calls to meeting planners and association leaders as a way to maintain visibility and continually educate potential clients to the value of Lodi as a meeting destination.

Wine & Dine: New this year, Visit Lodi! will hold two out of the area Wine & Dine social events for group decision makers as an alternative to the FAM Tour. These events will provide an opportunity for Visit Lodi! staff to promote Lodi to hard-to-reach decision makers.

### Research

Lodi Brand Print Program: In 2012 Visit Lodi! working with North Star Destination Strategies, will develop a Lodi Brand Print Strategy. The key component of the brand print strategy is an extensive research component that will at its conclusion provide a comprehensive demographic profile of the Lodi visitor as well as a brand platform statement which will guide future marketing activities.

## Customer Service/Hospitality

Visitor Information Packets: Visitor information will be distributed on request via email or through access on our website.

Website: The goal of the Visit Lodi! website is twofold: 1.) To educate and create awareness of Lodi as a visitor destination and to 2.) Provide the highest degree of customer service by ensuring that visitor information is complete, up-to-date and easily accessible. In 2012 Visit Lodi! will redesign their website to reflect the marketing direction suggested by the Lodi Brand Print program.

Visitor Publications: Visit Lodi! will develop and maintain a number of publications geared to increase availability of visitor information.

- **Lodi Visitor Guide:** An updated Lodi Visitor Guide will be presented for distribution in the Summer of 2012. The book which is designed to showcase Lodi to potential visitors and tourists is currently distributed to hotels, wineries, venues and other tourist attractions. It is one of the main marketing pieces for Visit Lodi! and is mailed upon request and is distributed at travel trade and sales shows. Consumers will be able to access the guide on-line and advertisers in the guide will have the ability to change their on-line ads 4 times throughout the year giving them flexibility in their advertising campaigns.
- **Festival & Events Calendar:** Visit Lodi! will produce an in-house designed/printed Festival & Events Calendar. The Calendar, produced quarterly, is a quick reference to events in the Lodi area and is distributed at the hotels, wineries, attractions, tradeshow, and included in visitor information packets.
- **Visitor Attraction Map & Guide:** The Visitor Attraction Map & Guide is distributed to hotels, wineries and attractions for their use and will be sent out to visitors upon request as well as utilized as give-a-ways at tradeshow. The map is designed to fold into a brochure so that it can be used in a card rack or as a self-mailer.
- **Meeting Facilities Brochure:** The Meeting Facilities Brochure is designed to provide information to potential consumers on event facilities and will be utilized heavily by Sales staff when promoting local venues to the group market.

Hotel Brochure Distribution: Visit Lodi! staff will provide a monthly brochure distribution service to all Lodi hotels, wineries and attractions. The goal is to ensure that visitor information is widely available and easily accessible to guests.

## **Events**

**Tourism Luncheon:** May 2012, Visit Lodi! will host the 5<sup>th</sup> Annual Tourism Luncheon. The Luncheon is designed to give Visit Lodi! the opportunity to promote their programs and services to the greater Lodi community.

**Taste of Lodi:** Visit Lodi! Board and staff will determine the feasibility of hosting a 2012 Taste of Lodi event. Key considerations will be economic viability and staffing resources.

## **Communications**

**Newsletter:** In 2012 Visit Lodi! will be moving to a digital format on their newsletter. In addition, we will be moving from a Bi-annual publication to a quarterly publication. The new publication will feature new business openings, events and other items of interest to those vested in the tourism industry as well as information on programs and services offered by the Visit Lodi! Conference & Visitors Bureau. The newsletter will be distributed to local business leaders and elected officials.

## **Committees**

**Hotel Council:** The Visit Lodi! Hotel Council meets quarterly to exchange information about Lodi events, promotions, and programs and services.

**Destination Lodi:** The Destination Lodi Committee which was started in 2011 is designed to bring together diverse industries vested in the Lodi tourism movement to enhance cooperation between industries as well as to increase cross-marketing opportunities.

RESOLUTION NO. 2011-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI  
CONFIRMING THE 2012 ANNUAL REPORT FOR THE LODI  
TOURISM BUSINESS IMPROVEMENT DISTRICT AND LEVY OF  
ASSESSMENT

=====

WHEREAS, the Lodi Tourism Business Improvement District was established October 20, 2004, by Council adoption of Ordinance No. 1753, and as amended by Ordinances 1756 and 1818; and

WHEREAS, the Annual Report, as required by Streets and Highways Code §36500 et seq., has been submitted to the City Council by the Board of Directors of said Improvement District; and

WHEREAS, a public hearing was held as required by Streets and Highways Code §36524 on November 16, 2011, in the City Council Chambers at Carnegie Forum, 305 West Pine Street, Lodi, California, at 7:00 p.m., or as soon thereafter as possible, to consider protests to the assessment levy.

NOW, THEREFORE, the City Council of the City of Lodi does hereby resolve, determine, and find as follows:

- 1) The required public hearing was duly held, at which time the public was allowed to present written or oral protests to the levy of assessment for Lodi Tourism Business Improvement District.
- 2) A majority protest as defined in the Streets and Highways Code §36525 was not made.
- 3) The 2011 Annual Report as submitted on November 2, 2011, by the Board of Directors of the Lodi Tourism Business Improvement District to the City Council is hereby confirmed as originally filed and attached hereto.
- 4) The confirmation of the report and adoption of this resolution constitutes the levy of the assessment as contained in the Annual Report for the calendar year 2012.

Dated: November 16, 2011

=====

I hereby certify that Resolution No. 2011-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2011, by the following vote:

AYES: COUNCIL MEMBERS –  
NOES: COUNCIL MEMBERS –  
ABSENT: COUNCIL MEMBERS –  
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk



***Please immediately confirm receipt  
of this fax by calling 333-6702***

CITY OF LODI  
P. O. BOX 3006  
LODI, CALIFORNIA 95241-1910

**ADVERTISING INSTRUCTIONS**

**SUBJECT:** A RESOLUTION OF INTENTION AND NOTICE OF PUBLIC HEARING TO  
LEVY ANNUAL ASSESSMENT FOR LODI TOURISM BUSINESS  
IMPROVEMENT DISTRICT AND APPROVE ANNUAL REPORT

**PUBLISH DATE:** SATURDAY, NOVEMBER 5, 2011

**LEGAL AD**

**TEAR SHEETS WANTED:** One (1) please

**SEND AFFIDAVIT AND BILL TO:**  
**LNS ACCT. #0510052**

RANDI JOHL, CITY CLERK  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910

**DATED:** THURSDAY, NOVEMBER 3, 2011

**ORDERED BY:** RANDI JOHL  
CITY CLERK

  
JENNIFER M. ROBISON, CMC  
ASSISTANT CITY CLERK

\_\_\_\_\_  
MARIA BECERRA  
ADMINISTRATIVE CLERK

**Verify Appearance of this Legal in the Newspaper – Copy to File**

Faxed to the Sentinel at 369-1084 at _____ (time) on _____ (date) _____ (pages)									
LNS	_____	Phoned to confirm receipt of all pages at _____ (time)	_____ CF	_____ MB	_____ JMR (initials)				



## **DECLARATION OF POSTING**

### **A RESOLUTION OF INTENTION AND NOTICE OF PUBLIC HEARING TO LEVY ANNUAL ASSESSMENT FOR LODI TOURISM BUSINESS IMPROVEMENT DISTRICT AND APPROVE ANNUAL REPORT**

On Thursday, November 3, 2011, in the City of Lodi, San Joaquin County, California, a resolution of intention and Notice of Public Hearing to levy annual assessment for Lodi Tourism Business Improvement District and approve Annual Report (attached and marked as Exhibit A), was posted at the following locations:

Lodi Public Library  
Lodi City Clerk's Office  
Lodi City Hall Lobby  
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2011, at Lodi, California.

ORDERED BY:

**RANDI JOHL  
CITY CLERK**

  
JENNIFER M. ROBISON, CMC  
ASSISTANT CITY CLERK

\_\_\_\_\_  
MARIA BECERRA  
ADMINISTRATIVE CLERK

**NOTICE OF PUBLIC HEARING**

RESOLUTION NO. 2011-175

A RESOLUTION OF INTENTION OF THE LODI CITY  
COUNCIL TO LEVY ANNUAL ASSESSMENT FOR LODI  
TOURISM BUSINESS IMPROVEMENT DISTRICT,  
ESTABLISHING PUBLIC HEARING DATE, AND  
APPROVING ANNUAL REPORT

=====

WHEREAS, Lodi Tourism Business Improvement District was established December 20, 2004, by City Council Ordinance 1753, and as amended by Ordinances 1756 and 1818; and

WHEREAS, the Annual Report, as required by Streets and Highways Code Section 36533, has been submitted to the Board of Directors of said improvement district.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that it does hereby resolve, determine, and finds as follows:

1. Approves the Annual Report as submitted, said report being on file with the City Clerk.
2. Establishes **November 16, 2011, in the City Council Chambers, Carnegie Forum, 305 West Pine Street, Lodi, California, at 7:00 p.m.**, or as soon thereafter as possible, as the date, place, and time to hold the public hearing.
3. It is the intention of the City Council to levy and collect assessments within the Lodi Tourism Business Improvement District for the calendar year 2012 (the District's fiscal year).
4. The proceeds from the Lodi Tourism Business Improvement District assessment shall be used to administer marketing programs to promote the City of Lodi as a tourism destination and to fund projects, programs, and activities that benefit hotels within the City of Lodi. The boundaries of the Lodi Tourism Business Improvement District shall be the boundaries of the City of Lodi and County Service Area #31 (Flag City). Refer to the report on file with the Lodi City Clerk's office for a full and detailed description of the improvements and activities, boundaries, and proposed assessments for the 2012 fiscal year.
5. At the time of the public hearing, written and oral protests may be made. The form and manner of protests shall comply with Streets and Highways Code Sections 36524 and 36525.

Dated: November 2, 2011

=====



I hereby certify that Resolution No. 2011-175 as passed and adopted by the City Council of the City of Lodi in a regular meeting held November 2, 2011, by the following votes:

AYES: COUNCIL MEMBERS – Hansen, Katzakian, Mounce,  
Nakanishi, and Mayor Johnson

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL  
City Clerk



## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Conduct a Public Hearing to Introduce an Ordinance Establishing a Fee Recovery Schedule for the Lodi Energy Theft Diversion Program

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Electric Utility Director

---

**RECOMMENDED ACTION:** Conduct a public hearing to introduce an ordinance establishing a fee recovery schedule for the Lodi Energy Theft Diversion Program.

**BACKGROUND INFORMATION:** Earlier this year, the Electric Utility Department launched the first phase of a program designed to curb the theft of electricity. Since July, when staff began tracking numbers, the utility has randomly checked 660 residential customers who were sealed for non-payment of their City of Lodi electric utility bills. Of these customers, 46 were observed having restored their electricity without the City's prior knowledge or consent. As a result of identifying these thefts, the City has received more than \$42,100 in utility payments from customers who were unlawfully receiving Lodi Electric Utility service, lessening the impact these thefts have on our ratepayers.

In an effort to fully recover costs associated with our energy theft diversion program, and to serve as a deterrent to energy theft, staff is recommending a new fee recovery schedule as shown on Exhibit A, attached. This fee schedule is the subject of this public hearing.

**FISCAL IMPACT:** It is anticipated that the utility will recover in excess of \$75,000 annually as a result of this aggressive energy theft diversion program, and the new fee recovery schedule should garner an additional \$50,000 in revenue, minimizing the amount of losses absorbed by ratepayers.

**FUNDING:** Not applicable.

---

Elizabeth A. Kirkley  
Electric Utility Director

**PREPARED BY:** Rob Lechner, Manager, Customer Service & Programs

EK/RSL/lst

---

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

**Exhibit A****Energy Theft Diversion/Field Services Fee Recovery Schedule****Service Fees (based on current fully burdened labor rates)**

Theft Inspection Fee	\$75.00
Field Services Field Trip Fee	\$75.00
Service Cut-At-Pole Fee	\$120.00
Meter Set Fee	\$115.00
Damaged Meter Test Fee	\$57.50

**Material Fees (actual costs)**

Meter Ring Fee	\$17.00
Padlock Fee	\$7.00
Meter Cover Fee	\$3.00
Damaged Meter Replacement Fee: Single-Phase/Poly-Phase	\$60.00/\$450.00
NightHawk Collar/Meter Replacement Fee	\$300.00/\$430.00

**Vehicle & Equipment Fees**

Based upon the current City of Lodi Electric Utility Department Rules and Regulations.

RESOLUTION NO. 2011-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING FISCAL YEAR 2011/12 ENERGY THEFT  
DIVERSION AND CUSTOMER FIELD SERVICE FEE  
RECOVERY SCHEDULE

=====

WHEREAS, it is sound business practice to adjust fees annually to reflect the current cost of doing business; and

WHEREAS, fees for customer field services and associated tasks have not been revised in a number of years; and

WHEREAS, the City is now implementing an aggressive energy theft diversion program and associated cost recovery schedule; and

WHEREAS, the City Council has previously approved the labor rate methodology developed by MGT America, Incorporated; and

WHEREAS, the labor rates for the Electric Utility Department have been calculated using the MGT America, Incorporated rate model; and

WHEREAS, annual approval of labor rates based upon the adopted budget is a ministerial action.

WHEREAS, staff recommends that the City Council approve the following fee schedule:

**Energy Theft Diversion/Field Services Fee Recovery Schedule**

**Service Fees (based on current fully burdened labor rates)**

Theft Inspection	\$75.00
Field Services Field Trip Fee	\$75.00
Service Cut-At-Pole Fee	\$120.00
Meter Set Fee	\$115.00
Damaged Meter Test Fee	\$57.50

**Material Fees (actual costs)**

Meter Ring Fee	\$17.00
Padlock Fee	\$7.00
Meter Cover Fee	\$3.00
Damaged Meter Replacement Fee: Single-Phase/Poly-Phase	\$60.00/\$450.00
NightHawk Collar/NightHawk Meter Replacement Fee	\$300.00/\$430.00

**Vehicle & Equipment Fees**

Based upon the current City of Lodi Electric Utility Department Rules and Regulations.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the fiscal year 2011/12 Energy Theft Diversion and Customer Field Service Fee Recovery Schedule as outlined above; and

BE IT FURTHER RESOLVED, that the 2011/12 Energy Theft Diversion and Customer Field Service Fee Recovery Schedule will take effect 30-days following the adoption Ordinance No. 1855.

Dated: \_\_\_\_\_, 2011

I hereby certify that Resolution No. 2011-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held \_\_\_\_\_, 2011, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2011-\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE LODI CITY COUNCIL AMENDING  
LODI MUNICIPAL CODE CHAPTER 13.20 – ELECTRICAL  
SERVICE – BY ADDING SECTION 13.20.020, “ENERGY  
THEFT DIVERSION/FIELD SERVICES FEE RECOVERY  
SCHEDULE”

=====

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Lodi Municipal Code Section 13.20 – Electrical Service is hereby amended by adding Section 13.20.020 “Energy Theft Diversion/Field Services Fee Recovery Schedule,” and shall read as follows:

Section 13.20.020 Energy Theft Diversion/Field Services Fee Recovery Schedule

A. PURPOSE: The Lodi City Council finds and determines that there is and has been a rise in utility theft in the City of Lodi whereby electricity services are being obtained without payment, including but not limited to, shutoff costs, meter tampering, damage to or removal of meter locking devices, energy diversion or theft of electric service, resulting in substantial monetary losses to the City’s ratepayers in the form of, including but not limited to, loss of revenue, replacement of damaged meters, meter testing fee and other related equipment replacement or repair costs, personnel time in investigating and remedying theft matters, investigative costs and attorney’s fees. The purpose of this ordinance is to establish clear guidelines for the processing and recovery of revenues related to theft as well as costs, fees and expenditures incurred by the City as a result of utilities theft as described herein.

B. ADOPTION OF FEES: The Lodi City Council shall from time to time establish by Resolution fees to be charged to utility account holders where the City incurs costs as a result of nonpayment, meter tampering or actual or attempted theft of energy. Costs shall not exceed actual cost. Fees shall be limited to the following:

- 1) Theft Inspection Fee - shall be charged upon an inspection that shows that the meter has been tampered with or that the meter has been bypassed.
- 2) Field Services Field Trip Fee - shall be charged on accounts that are sealed for nonpayment.
- 3) Service Cut-At-Pole Fee – shall be charged on accounts that cannot be turned off at meter box when sealed for nonpayment or on accounts that the meter has been bypassed or tampered with.
- 4) Meter Set Fee – shall be charged when a meter must be replaced when the meter has been tampered with or bypassed.
- 5) Damaged Meter Test Fee – shall be charged when a meter must be tested after the meter was tampered with or bypassed.
- 6) Meter Ring Fee – shall be charged when meter ring must be replaced after the meter was tampered with or bypassed.
- 7) Padlock Fee – shall be charged when padlock must be installed or replaced  
\_\_\_\_\_

after the meter was tampered with or bypassed.

- 8) Meter Cover Fee – shall be charged when meter cover must be replaced after the meter was tampered with or bypassed.
- 9) Damaged Meter Replacement Fee – shall be charged when meter is unrepairable and must be replaced after meter was tampered with or bypassed (separate fees for Single-Phase and/or Poly-Phase).
- 10) Nighthawk Collar/ Nighthawk Meter Replacement Fee – shall be charged when Nighthawk Collar and/or Nighthawk meter must be replaced after the meter was tampered with or bypassed.
- 11) Vehicle & Equipment Fees – shall be charged based upon the current City of Lodi Electric Utility Department Rules and Regulations, Appendix A, page A-1.

SECTION 2. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 5. This ordinance shall be published pursuant to law and shall become effective 30 days from the date of passage and adoption.

2011

Approved this \_\_\_\_ day of \_\_\_\_\_,

Attest:

\_\_\_\_\_  
BOB JOHNSON  
Mayor

RANDI JOHL  
City Clerk

State of California  
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. \_\_\_\_ was introduced at a regular meeting of the City Council of the City of Lodi held November 16, 2011, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 2011, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. \_\_\_\_ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL  
City Clerk

Approved to Form:

D. STEPHEN SCHWABAUER  
City Attorney





***Please immediately confirm receipt  
of this fax by calling 333-6702***

CITY OF LODI  
P. O. BOX 3006  
LODI, CALIFORNIA 95241-1910

**ADVERTISING INSTRUCTIONS**

**SUBJECT:** PUBLIC HEARING TO CONSIDER INTRODUCING ORDINANCE  
ESTABLISHING A FEE RECOVERY SCHEDULE FOR THE LODI ENERGY  
THEFT DIVERSION PROGRAM

**PUBLISH DATE:** SATURDAY, OCTOBER 8, 2011


**LEGAL AD**

**TEAR SHEETS WANTED:** Three (3) please

**SEND AFFIDAVIT AND BILL TO:** RANDI JOHL, CITY CLERK  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910

**DATED:** THURSDAY, OCTOBER 6, 2011

**ORDERED BY:** RANDI JOHL  
CITY CLERK

  
JENNIFER M. ROBISON, CMC  
ASSISTANT CITY CLERK

\_\_\_\_\_  
MARIA BECERRA  
ADMINISTRATIVE CLERK

**Verify Appearance of this Legal in the Newspaper – Copy to File**

LNS Faxed to the Sentinel at 369-1084 at \_\_\_\_\_ (time) on \_\_\_\_\_ (date) \_\_\_\_\_ (pages)  
Phoned to confirm receipt of all pages at \_\_\_\_\_ (time) \_\_\_\_\_ JMR MB (initials)



## **DECLARATION OF POSTING**

### **PUBLIC HEARING TO CONSIDER INTRODUCING ORDINANCE ESTABLISHING A FEE RECOVERY SCHEDULE FOR THE LODI ENERGY THEFT DIVERSION PROGRAM**

On Thursday, October 6, 2011, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider introducing ordinance establishing a fee recovery schedule for the Lodi Energy Theft Diversion Program (attached and marked as Exhibit A), was posted at the following locations:

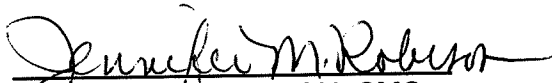
Lodi Public Library  
Lodi City Clerk's Office  
Lodi City Hall Lobby  
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 6, 2011, at Lodi, California.

ORDERED BY:

**RANDI JOHL  
CITY CLERK**

  
**JENNIFER M. ROBISON, CMC  
ASSISTANT CITY CLERK**

\_\_\_\_\_  
**MARIA BECERRA  
ADMINISTRATIVE CLERK**



## CITY OF LODI

Carnegie Forum  
305 West Pine Street, Lodi

### NOTICE OF PUBLIC HEARING

Date: November 16, 2011

Time: 7:00 p.m.

For information regarding this notice please contact:

**Randi Johl**

**City Clerk**

**Telephone: (209) 333-6702**

**EXHIBIT A**

### NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, November 16, 2011**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

- a) **Introduce an ordinance establishing a fee recovery schedule for the Lodi Energy Theft Diversion Program.**

Information regarding this item may be obtained in the Electric Utility Department, 1331 South Ham Lane, Lodi, (209) 333-6762. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2<sup>nd</sup> Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

Randi Johl  
City Clerk

**Dated:** October 5, 2011

Approved as to form:

D. Stephen Schwabauer  
City Attorney



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Post for Vacancy on the Lodi Animal Advisory Commission

**MEETING DATE:** November 16, 2011

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Direct the City Clerk to post for one vacancy on the Lodi Animal Advisory Commission.

**BACKGROUND INFORMATION:** The bylaws of the Lodi Animal Advisory Commission state that any member who misses three consecutive regular meetings of the Commission without leave of absence from the Commission expressed in its official minutes shall be deemed to have vacated the office. One member has missed in excess of that, and at the request of the Lodi Animal Advisory Commission, it is recommended that the City Council direct the City Clerk to post for the vacancy below.

**Lodi Animal Advisory Commission**

Manual Martin                      Term to expire December 31, 2013

Government Code Section 54970 et seq. requires that the City Clerk post for vacancies to allow citizens interested in serving to submit an application. The City Council is requested to direct the City Clerk to make the necessary postings.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** None required.

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Randi Johl  
City Clerk

RJ/JMP

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager and Treasurer to Execute Agreements for Remit Plus Software, Merchant Card Services and Remote Deposit Services with Jack Henry and Associates, Inc., Elavon, Inc., and Farmers & Merchants Bank of Central California, and Direct City Manager and Treasurer to Negotiate a Banking Services Contract with Farmers & Merchants Bank

**MEETING DATE:** November 16, 2011

**PREPARED BY:** Treasurer

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**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager and Treasurer to execute agreements for Remit Plus Software, Merchant Card Services and Remote Deposit Services with Jack Henry and Associates, Inc., Elavon, Inc., and Farmers & Merchants Bank of Central California, and direct City Manager and Treasurer to negotiate a banking services contract with F&M Bank.

**BACKGROUND INFORMATION:** In May 2011, staff brought forward recommendations for award of banking services based upon responses received to a Request for Proposals issued in February 2011. Council directed staff to obtain additional information and bring the matter back at a later date.

Since the May Council meeting, staff has had discussions with a number of the proposing banks regarding the services required by the City. As Council will recall, the City separated banking services into Mandatory Services and Optional Services. Staff is recommending that action be taken on the Optional Services as discussed below and recommending that Council direct the City Manager and Treasurer to negotiate a contract with Farmers and Merchants Bank of Central California (F&M Bank) for Mandatory Services.

### **Lockbox**

Staff requested proposals for a classic lockbox-type service wherein customers would mail their utility payments to a post office box and a third party would process those payments and deposit funds into the City's bank account. The desire to contract out this service was driven by significant costs associated with replacing outdated, worn-out equipment. Staff had initially recommended award of this service to Bank of America at a five-year cost of \$182,661.

F&M Bank subsequently brought an alternative proposal to the City utilizing a Jack Henry and Associates product called Remit Plus. Staff viewed a demonstration of the product and checked references on other California cities that currently use this product, including a site visit to one customer. Staff was impressed with the ease of use of both the hardware and software and small footprint of the hardware. Current customers rated the product very highly. One-time hardware and software costs total \$20,389. Annual software maintenance costs are \$2,306.25. Monthly processing fees based upon a transaction

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

volume of 12,400 items per month are \$1,118. Total five-year costs, including one-time costs, are \$99,000. Staff estimates five-year costs for maintaining the status quo operation at about the same as that of the Bank of America lockbox proposal (approximately \$182,000). The recommended solution will save the City an estimated \$83,661 over the five years.

### **Merchant Card Services**

The City accepts a variety of debit and credit card products as a way for our customers to pay for fees and services. The City is currently on a "Tiered and Category" pricing structure and it is proposed to move to an "Interchange Plus" fee basis. Staff had initially recommended that services be awarded to Elavon, based upon its proposal submitted with the Bank of the West proposal.

F&M Bank subsequently brought forward a proposal from Elavon to move the City to an Interchange Plus pricing structure, at a pricing structure slightly better than that provided in the Bank of the West proposal. Further, F&M Bank proposes to retroactively apply the new pricing structure, giving the City a refund of past fees totaling \$12,000. Based upon the quantities used in the Request for Proposals and the revised pricing, total five-year costs (excluding interchange fees) would be \$19,129, or \$2,903 lower than Bank of the West/Elavon. Total City costs for merchant card services (including interchange fees) for the period of April 2010 through March 2011 were \$63,266 under the Tiered and Category pricing structure. Total costs for merchant card services for the same timeframe under the Interchange Plus fee structure would have been \$51,030, a savings of \$12,236. Extrapolating this savings over a five-year period yields savings of \$61,180.

### **Remote Deposit Capture**

Remote Deposit Capture (RDC) is a banking service that allows for the conversion of a paper check into electronic media that can be processed through the banking system. RDC will speed up the deposit process by allowing electronic deposit of checks instead of the current process of posting in Finance and transmittal to the bank via courier. This service is targeted for locations other than Finance that take payments. Staff had initially recommended award of this service to Bank of the West.

F&M Bank has developed an offering at a significantly reduced per-item fee and will provide the hardware without charge to the City. Total costs are estimated to be \$7,702 over a five-year period as compared to the \$12,144 proposed by Bank of the West. Further, this service will be expanded into outlying departments that accept checks so that such payment may be converted to electronic media and processed immediately. The expanded services are included in the estimated costs noted above. Adopting this service will save the City a penny per transaction over continuing the paper processing and increase the City's funds availability. Estimated cost savings over a five-year period will amount to about \$1,500.

### **Banking Services Contract**

Staff is seeking authority from the Council to negotiate a banking services contract with F&M Bank with the following basic terms:

- Five-year term, with option to extend for up to two years
- Fixed pricing for the term of the contract
- Basic banking services to include, but not be limited to, deposit processing, electronic funds transfers, direct deposit, positive pay services, account reconciliation and appropriate collateralization
- Earnings credit rate of at least 0.75 percent
- Clearly defined reserve requirements, exposure limitations and security interest levels
- Liability commensurate with exposure

Banking services is one of the few services the City receives that is not backed by a comprehensive written contract. Best business practices would dictate that such services are defined in a written contract.

**FISCAL IMPACT:** Approval of the agreements for Remit Plus, Merchant Card Services and Remote Deposit Capture services will cost the City approximately \$125,800 over a five-year period, including one-time costs of \$20,389. Approval of the Merchant Card Services agreement will generate a refund to the City of \$12,000, partially offsetting the one-time costs for hardware and software for Remit Plus. Securing a long-term banking services agreement will provide for known costs over the term of the agreement.

**FUNDING AVAILABLE:** FY 2011/12 costs budgeted across various business units. Additional one-time costs for Remit Plus hardware and software will be absorbed within Finance Division appropriations. Future year costs will be included in budgets presented for adoption.

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Jordan Ayers  
Treasurer

JA/ja

Attachments



**MASTER SOFTWARE LICENSE AGREEMENT**  
ProfitStars® Software

**OFFICE ADDRESS OF JHA:**

Jack Henry & Associates, Inc.  
663 West Highway 60  
Monett, MO 65708

DATE: October 24, 2011

**NAME AND ADDRESS OF CUSTOMER:**

City of Lodi  
221 W. Pine Street  
Lodi, CA 95240

Jack Henry & Associates, Inc., acting through its ProfitStars Division ("JHA"), is engaged in the business of licensing computer software and providing related services for use by organizations. By their execution of this Agreement, Customer agrees to obtain from JHA, and JHA agrees to furnish to Customer, on the terms and conditions contained herein, all of the computer software products and associated maintenance support and professional services detailed in Exhibit A and addenda to this Agreement.

JHA and Customer agree as follows:

1. JHA grants and Customer accepts a non-transferable (except as authorized herein) and non-exclusive license (the "License") to use the Software described in Exhibit A or an addendum to this Agreement during the term of this Agreement.

2. The License granted to Customer shall be subject to all Standard Terms and Conditions set forth in this Agreement, Exhibit A and any additional attached Exhibit or addenda documents (if any), all of which are incorporated in and specifically made a part of this Agreement.

The Standard Terms and Conditions shall apply in all events except where specifically superseded in Exhibit A or superseded as to individual items of Software in the additional attached Exhibit or addenda documents (if any).

In witness of this agreement, authorized representatives of the parties have signed this Agreement where provided below, in duplicate copies.

JHA:

**Jack Henry & Associates, Inc.**  
ProfitStars Division

Customer:

**City of Lodi**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

JS: 87388  
Sales Rep: Gary Holt



**ProfitStars® Software**  
**Standard Terms and Conditions**

**1. DEFINITIONS**

1.1 "Affiliates" means the parent company of a party; a subsidiary of a party in which the party owns controlling ownership interest; or a subsidiary of a party's parent company in which the parent company owns controlling ownership interest.

1.2 "Confidential Information" includes, but is not limited to, the following types of information and other information of a similar nature whether provided in writing (whether marked as confidential or not), orally, or on magnetic disk or tape or by any other means or medium whatsoever: (a) trade secrets, software, documentation, systems, procedures, manuals, confidential reports, business plans and customer lists; (b) nonpublic personal information and data of Customer's customers and consumers which is subject to applicable data privacy laws and regulations ("NPI Data"); and (c) the terms and conditions of this Agreement and each Exhibit or addendum to this Agreement. Notwithstanding the foregoing, Customer may disclose the provisions of this Agreement in accordance with the Open Records laws of the State of California.

1.3 "Customization" means any modification of the Software program code and/or Documentation made by JHA pursuant to a Services order executed between JHA and Customer. Once incorporated with the Software programs, a Customization becomes an integrated part of the Software program and will be deemed as Software for the purpose of this Agreement.

1.4 "Documentation" means all installation, operating instruction and end user manuals, in hard copy or electronic form, provided by JHA with the Software programs to support the use and operation of the Software programs.

1.5 "Enhancements" mean new Software program features or functions provided by JHA to Customer and other Software Customers as part of Maintenance which are not licensed by JHA separately for an additional License fee payable by its customers generally. Once installed by Customer, Enhancements become an integrated part of the Software.

1.6 "Error" means (a) with respect to Software, any malfunction of a Software program feature or function that causes the program not to operate in accordance with its Documentation; and (b) with respect to Professional Services, any nonconformity of the Professional Services with the warranty stated in Section 5.1 below.

1.7 "License" means the licensed rights granted to Customer to install and use the Software as provided in this Agreement.

1.8 "Maintenance" means the Software maintenance support performed by JHA under this Agreement to provide Error correction services and deliver Updates and Enhancements for the Software to Customer.

1.9 "Professional Services" means any Software installation, conversion, customization, consulting, training or other services performed by JHA to assist in Customer's implementation of the Software.

1.10 "Software" means the JHA software programs identified in Exhibit A to this Agreement and any subsequent addendum to this Agreement; Documentation accompanying the software programs; and all Enhancements, Updates, Upgrades, Customizations, and modifications thereto.

1.11 "Third Party Software" means any software program and accompanying documentation that is identified as a Third Party Software product in Exhibit A or an addendum to this Agreement and is owned and licensed by a party other than JHA.

1.12 "Updates" means periodic Software program fixes, patches and releases issued by JHA to correct Errors reported in the Software

programs as part of standard Maintenance. Once installed by Customer, Updates become an integrated part of the Software.

1.13 "Upgrades" means new versions of the Software issued by JHA which include major new features and functionality for which JHA requires the payment of a separate license fee from its customers generally.

**2. SCOPE OF AGREEMENT**

2.1 This Agreement pertains to Software Licenses, Maintenance and Professional Services acquired by Customer and its Affiliates from JHA and its Affiliates. The initial transaction is identified in Exhibit A to this Agreement. Subsequent Software License, Maintenance and/or Professional Services transactions will be documented in separate addenda, Statements of Work or services orders executed between the parties.

2.2 Affiliates of JHA and Customer may transact business together and participate in this Agreement by executing separate addenda, Statements of Work and services orders pertaining to Software Licenses, Maintenance and Professional Services which specifically reference this Agreement. In such instances, all references to JHA in this Agreement shall be read to apply to the JHA Affiliate and all references to Customer in this Agreement shall be read to apply to the Customer Affiliate, unless otherwise specifically indicated in an individual addendum.

2.3 This document establishes the terms and conditions that will apply to and govern the JHA product Software Licenses acquired by Customer from JHA. With respect to Third Party Software products acquired by Customer from JHA, the third party owner's software license agreement accompanying those products will govern Customer's use. For a particular Software product, a supplemental exhibit or addendum document may be included with this Agreement that provides terms and conditions applicable specifically to that Software product. The defined terms shown in Section 1 (Definitions) above shall have the same meaning in any supplemental exhibit or addendum document incorporated as a part of this Agreement. In the event of any conflict between a provision in this Standard Terms and Conditions document and a supplemental exhibit or addendum document, the provision of the supplemental exhibit or addendum document will govern and control with respect to the particular Software product covered by the supplemental exhibit or addendum document.

2.4 JHA may offer for sale to Customer certain third party hardware for Customer's use with the Software. All hardware and any related installation and maintenance services provided by JHA to Customer shall be documented in accordance with a separate hardware agreement between the parties.

**3. FEES**

3.1 Customer shall pay to JHA the fees, payments and expenses set out in the attached Exhibit A and any subsequent addendum to this Agreement, for the Software Licenses, Maintenance and Professional Services described in the Exhibit A, addendum, Statement of Work or services order. All fees will be quoted, invoiced and payable in U.S. dollars, unless otherwise indicated in Exhibit A or an individual addendum, Statement of Work or services order.

3.2 Customer shall promptly reimburse JHA for all actual, reasonable out-of-pocket expenses incurred by JHA's personnel traveling to and from Customer's site to perform Professional Services. JHA will incur these expenses in accordance with JHA's corporate travel policies and procedures and will invoice these expenses to Customer on a monthly basis as incurred. A copy of JHA's corporate travel policies will be provided to Customer upon request. In addition, JHA will apply reasonable efforts to comply with Customer's written corporate travel policy requirements communicated by Customer to JHA in advance of JHA's booking of reimbursable travel to and from Customer's location.

3.3 Customer shall be responsible to pay all taxes, duties and other charges which may be imposed by a government entity on the transactions completed under this Agreement, except for taxes based on JHA's revenue or income. If Customer is exempt from paying taxes on the transactions, Customer shall deliver a copy of its then-current tax exemption certificate, which JHA shall be entitled to rely upon in not invoicing Customer for applicable taxes on the transaction.

#### 4. SOFTWARE LICENSE

4.1 In consideration of Customer's payment of the Software License fees for each copy of the Software licensed by Customer as shown in Exhibit A or an addendum to this Agreement, JHA grants to Customer the following non-transferable (except as authorized herein) and non-exclusive License rights, subject to the restrictions stated below:

- (a) Customer may install the Software copy on its computers and access and use the Software copy solely for its internal operations and in its deployment environment, in accordance with the scope and metrics of the License described in Exhibit A or an addendum to this Agreement and pursuant to the terms and conditions of this Agreement. Customer may acquire additional License copies of the Software for use in Customer's production and nonproduction deployment environments (e.g. development, testing and disaster recovery).
- (b) The Software copy shall be used only to process data of Customer's organizations and Affiliates listed in Exhibit A or an addendum to this Agreement, in one operating environment, in one data library on one or more computers operated only by Customer's employees or contractors or the employees or contractors of such Affiliates. Customer shall use the Software only at the site locations of Customer and its Affiliates that are identified in Exhibit A or an addendum to this Agreement.
- (c) For Software which is designated as server-based Software, Customer shall be entitled to install, access and use the Software copy programs on a single server computer located at Customer's site identified in Exhibit A or an addendum to this Agreement. Customer may transfer the installation of the Software copy programs to another server at Customer's site by giving JHA prior written notice and the full installation details of the new Customer site of the installation so that JHA can issue any new license keys required for operation of the Software on a different server.
- (d) For Software which is designated as being workstation-based Software, Customer may install the Software copy programs on the number of Customer-owned client workstations and access the Software programs up to the maximum limit of the authorized users shown in Exhibit A or an addendum to this Agreement for the workstation License purchased by Customer.
- (e) For Software which is licensed by an individual operating system, database system, internet browser, hardware or other technology platform type, Customer shall be entitled to use the Software solely in conjunction with the technology platform with which the Software has been designed and certified by JHA or its licensors to operate. Licensing of the same Software product based on a different technology platform type by Customer may require the payment of separate License and Maintenance fees to JHA.
- (f) For Software which is designated as being a Software application template, Customer shall be entitled to modify and customize the Software application template programs in order to create and deploy a completed software application for deployment and use in Customer's operations.

Exhibit A or an addendum to this Agreement may include supplemental licensing terms and restrictions which pertain to the specific Software products identified therein.

4.2 Each License acquired by Customer to use the Software described in Exhibit A or an addendum to this Agreement shall be in effect for the period of time specified in Exhibit A or the addendum under which the Software was licensed, beginning upon the date of initial delivery of the Software products to Customer. If no license term period is specified, the default term period for any License shall be for twenty-five (25) years. For any additional copies of the Software or additional components of the Software subsequently licensed by Customer, the license term period shall be coterminous with the license term period applicable to the original Software License acquired by Customer for the Software product(s).

4.3 Additional License fees will be due and payable by Customer to JHA for using the Software to process the data of additional Customer or Affiliate organizations other than those listed on Exhibit A; for an increase in the scope of its existing Software Licenses; or for licensing additional Software products or components.

4.4 Except as authorized in this Agreement, the License and the Software shall not be assigned, sublicensed, or otherwise transferred or copied in any manner by Customer without the prior written consent of JHA. The Software may not be installed or used by Customer in a timesharing, rental, ASP/hosted or service bureau environment, without the prior written consent of JHA. Customer shall be authorized to make up to three (3) copies of the Software for its own archival or back-up purposes only. Customer may print a reasonable number of hard copies of the online Documentation for the sole reference and use by individual users of the Software within Customer's organization. All authorized copies of the Software programs or Documentation made by Customer shall include all of the proprietary notices and legends included by JHA or its licensors on the original Software programs and Documentation.

4.5 Customer shall not disassemble, reverse engineer, decompile or perform any other action to determine the source code of the Software programs unless such action is authorized by applicable law, or create any derivative works from the Software programs or Documentation. Customer shall not remove or alter proprietary notices of JHA or its licensors on any of the Software programs or other materials associated with the Software.

4.6 Customer shall install and use the server-based Software only at the server site location of Customer specified in Exhibit A or an addendum to this Agreement. Customer further agrees that prior to providing any functions performed by the Software to any other organization, Customer will require the other organization to sign JHA's standard performance guarantee regarding that organization's use of and access to the Software. However off-site testing and/or disaster processing is permitted provided the owner/operator of the off-site facility has signed JHA's Confidentiality Agreement, and JHA is promptly notified by Customer.

4.7 Customer also covenants and warrants to JHA that Customer's Affiliates and all other organizations authorized to access and use the Software and off-site test/disaster facilities shall conform to, abide by and be governed and bound by this License Agreement as though they were Customer. Customer accepts full responsibility and liability to JHA for any breach of this Agreement by Customer's Affiliates and any other organization granted access to the Software by Customer and/or in an off-site test/disaster facility used by Customer. If Customer, its Affiliates or any other organization accessing the Software and/or in an off-site test/disaster facility breaches this Agreement, and such breach is not corrected within thirty (30) days after Customer receives written notice of the breach from JHA, then JHA may terminate Customer's license to use the Software, and Customer shall immediately cease using the Software and shall return all copies of the Software to JHA.

4.8 For any Third Party Software products identified in Exhibit A or an addendum to this Agreement, the License granted to Customer for use of the Third Party Software is specified in and governed by the separate software license agreement provided by the owner of the Third Party Software with the Third Party Software programs or as identified in the supplemental exhibit or addendum pertaining to the Third Party Software product. JHA makes no separate License grant or extends any product warranties, indemnities and liabilities for Third Party Software to Customer. Any warranties or indemnities provided by the third party Software owner in its standard software end-user license agreement for the third party Software product shall exclusively apply to the product. JHA shall pass through to Customer for Customer's benefit all end-user

software warranties and indemnities that the third party Software owner provides directly to JHA.

4.9 JHA may incorporate license management functionality with the Software programs to restrict the access and use of the Software programs by Customer within the scope of the authorized License acquired by Customer. Customer shall not disable or take any actions to avoid or override the license management features of the Software programs. As a condition of licensing the Software to Customer, JHA may require that Customer identify the details of the server upon which the Software programs will reside. Upon JHA's written request to be issued not more frequently than once each calendar year, Customer shall furnish JHA with a written certification signed by an executive or senior manager of Customer verifying the location of the Software installation and acknowledging that Customer's use of the Software has been in continuous compliance with the terms of this Agreement.

4.10 If Customer is a U.S. government entity, the Software products and/or Services are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software—Restricted Rights at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR supplement, as applicable.

## **5. WARRANTIES**

5.1 JHA warrants to Customer that:

(a) For a period of ninety (90) days following JHA's delivery of the Software to Customer (the "Warranty Period"), the unmodified Software programs will operate in accordance with the Documentation in effect at the time of delivery. If Customer has contracted for JHA to perform the Software installation, the Warranty Period will commence on the date of Software installation at Customer's site (the "Implementation Date"). Under this warranty, JHA will apply commercially reasonable efforts to correct Errors in the Software reported by Customer during the Warranty Period at no extra charge to Customer. If JHA does not correct the Errors reported by Customer within thirty (30) days following the expiration of the Warranty Period, Customer may terminate this Agreement and receive a full refund of all fees paid by Customer to JHA for the affected Software covered by this warranty. Errors reported by Customer after expiration of the Warranty Period will be addressed by JHA solely in accordance with the Maintenance provisions of Section 15 (Software Maintenance) below. JHA does not warrant that the Software is Error-free or will operate in an uninterrupted manner.

(b) The Software furnished hereunder is free and clear of all liens and encumbrances, and JHA has full power and authority with respect to the Software to license the Software to Customer without the consent of any other person, or in the event such is required JHA has obtained all required consents.

(c) JHA will utilize commercially available virus protection software in order to ensure that the Software programs will be free from known viruses, bombs and other destructive elements which negatively affect Customer's use and operation of the Software.

(d) The Maintenance will be provided to Customer in a timely and professional manner consistent with software industry standards for maintenance support of commercial software products comparable to the Software products licensed by Customer under this Agreement.

(e) The Professional Services provided by JHA to Customer under this Agreement will be performed in a timely and professional manner consistent with software industry standards and in accordance with the requirements and specifications identified in Exhibit A, an addendum to this Agreement, or a separate Statement of Work or services order executed between the parties (whichever is applicable). These warranties are valid for a period of thirty (30) days commencing from the completion date of the Professional Services project. If Customer reports any Errors in the Professional Services to JHA within this warranty period, JHA shall re-perform the affected Professional Services at no additional charge to Customer. Upon completion of this second delivery of the Professional Services, Customer shall have an additional thirty day warranty period to confirm that the Professional Services conform to the warranty stated above. If the second delivery of

Professional Services does not correct the Errors in the Professional Services, then the affected Exhibit A, addendum to this Agreement, Statement of Work, and/or services order (whichever is applicable) may be terminated by either party and JHA shall refund to Customer all fees and reimbursable expenses previously paid by Customer to JHA for the defective Professional Services.

THE WARRANTIES STATED IN THIS SECTION 5.1 ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES RELATING TO THE SOFTWARE, MAINTENANCE AND PROFESSIONAL SERVICES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.2 Each party warrants to the other party that:

(a) It has all requisite legal right, power and authority to execute and deliver this Agreement and each Exhibit, addendum, Statement of Work and services order executed against this Agreement, as a legal, valid and binding obligation of that party, which is enforceable against that party in accordance with its terms.

(b) There is no agreement or understanding with any third party that interferes with or will interfere with its performance of its obligations under this Agreement and any Exhibit, addendum, Statement of Work or services order executed against this Agreement.

## **6. OWNERSHIP**

6.1 All Software and any other intellectual property furnished now or hereafter by JHA to Customer shall be and remain the exclusive property of JHA and its licensors, subject to the License rights granted to the Customer in this Agreement and Exhibit A and addenda to this Agreement. All Software provided by JHA to Customer under this Agreement is licensed and not sold.

6.2 All software programs, data, technology and any other intellectual property owned by Customer and its licensors and provided or made accessible to JHA under this Agreement shall be and remain the exclusive property of Customer and its licensors.

## **7. TRADE SECRETS**

7.1 Customer acknowledges that the Software provided by JHA under this Agreement incorporates trade secrets of JHA and its licensors, and as such is protected by civil and criminal law, is very valuable to JHA and its licensors, and that its use must be carefully and continuously controlled. Customer shall use the highest standard of diligence to protect the confidentiality of the Software, but in no event exercising not less than reasonable care, and shall prohibit the unauthorized access to, use or duplication of any of the Software in its possession. Customer shall keep all machine-readable Software in a secure place which is as secure as Customer provides for its own confidential materials of like nature and importance. Customer shall notify JHA immediately of the unauthorized possession, use or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use or knowledge. Customer shall promptly furnish JHA full details of such possession, use or knowledge, and shall cooperate fully with JHA in any litigation against third parties deemed necessary by JHA to protect its proprietary rights. Customer's compliance with the above shall not be construed in any way as a waiver of JHA's right to recover damages or obtain other relief against Customer for its negligent or intentional harm to JHA's proprietary rights or for Customer's breach of its contractual obligations to protect the confidentiality of the Software.

7.2 If Customer attempts or allows others to attempt to use, copy, duplicate, transcribe or convey the items supplied by JHA pursuant to this Agreement, in a manner contrary to the terms of this Agreement or in derogation of JHA's proprietary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, JHA shall have, in addition to any other remedies available to it at law or equity, the right to seek injunctive relief enjoining such actions. Customer hereby acknowledges that in such instances irreparable harm will occur to JHA and that other remedies are inadequate.

## **8. COMPLIANCE WITH LAWS**

8.1 Customer assumes all responsibility for using the Software in a manner that is in compliance with all laws and regulations relating to such use of the Software.

8.2 With respect to NPI Data disclosed under this Agreement, the parties shall comply with applicable data privacy and security laws and regulations pertaining to NPI Data, including but not be limited to the Gramm-Leach-Bliley Act ("GLBA") and the Health Insurance Portability and Accountability Act ("HIPAA").

8.3 The parties represent that they are equal opportunity employers and do not discriminate in the employment of persons or awarding of subcontracts because of a person's race, sex, age, religion, national origin, veteran or handicap status. Without limiting the foregoing, the parties agree to comply with applicable federal and state laws, regulations and orders pertaining to the activities contemplated by this Agreement, including but not limited to (a) Executive Order 11246, as amended or superseded in whole or in part, and as contained in Section 202 of the Executive Order as found at 41 C.F.R. § 60-1.4(a)(1-7); (b) Section 503 of the Rehabilitation Act of 1973 as contained in 41 C.F.R. § 60-741.4; and (c) The Vietnam Era Veterans' Readjustment Assistance Act of 1974 as contained in 41 C.F.R. § 60-250.4.

8.4 The Software and related technical data provided by JHA to Customer under this Agreement is of U.S. origin and therefore subject to U.S. export control laws and regulations. Both parties shall comply with all export control laws and regulations applicable to the export or re-export of the Software and technical data to persons or destinations prohibited or restricted by law.

## 9. SOFTWARE DELIVERABLES

9.1 The Software programs will be delivered to Customer in an object code format, unless otherwise specified in Exhibit A or an addendum to this Agreement.

9.2 The Documentation for the Software will be in electronic format unless otherwise noted in Exhibit A or an addendum to this Agreement and shall be complete and accurate so as to enable a reasonably skilled Customer user who has received JHA's training to effectively use all of its features and functions without assistance from JHA. The Documentation delivered to Customer shall be JHA's most current version applicable to the Software programs involved.

## 10. CONFIDENTIAL INFORMATION

10.1 All Confidential Information communicated by one party to the other party under this Agreement, whether before the effective date or during the term of this Agreement, shall be received in strict confidence and shall be used by the receiving party only for the purposes authorized by this Agreement. Except as provided below, Confidential Information shall not be disclosed by the receiving party to parties other than its employees, agents, contractors, auditors and advisors (collectively, the "Representatives"), without the prior written consent of the disclosing party. The receiving party shall ensure that each Representative given access to the disclosing party's Confidential Information shall be legally bound to honor and protect the Confidential Information of the disclosing party on terms consistent with the confidentiality obligations applicable to the receiving party under this Agreement. Each party agrees to take all reasonable precautions to prevent the unauthorized disclosure of the Confidential Information to third parties, including without limitation, the terms of this Agreement, except as the disclosure may be necessary or mandated by reason of legal, accounting or regulatory requirements beyond the reasonable control of JHA or Customer, as the case may be. The receiving party shall apply the same standard of care with respect to the disclosing party's Confidential Information that it applies to its own Confidential Information of like nature and importance, but in no event with less than a reasonable standard of care. If Third Party Software products or Professional Services are specified in Exhibit A or an Addendum to this Agreement, then JHA shall be authorized to disclose the terms and conditions of this Agreement to the owner of the Third Party Software products or Professional Services to fulfill its contract reporting obligations to the third party owner.

10.2 With the exception of NPI Data, the receiving party shall be under no obligation with respect to Confidential Information which (a) was in the public domain prior to the receipt of the information by the receiving party, or subsequently becomes part of the public domain by

publication or otherwise, except disclosure by or the wrongful act of the receiving party, its owners, officers, directors, employees, agents or representatives; (b) was in the lawful possession of the receiving party prior to its receipt from the disclosing party and was not acquired by the receiving party directly or indirectly from the disclosing party or any of disclosing party's customers, and the sources of such information had not obtained the information wrongfully and had no obligations of confidentiality or secrecy with respect thereto; (c) was independently developed by the receiving party without access to the Confidential Information; or (d) is provided by the disclosing party to another person or party without being subject to an obligation of confidentiality by the other person or party with respect to the Confidential Information. The receiving party has the burden of proving that the Confidential Information was subject to one or more of the above listed exceptions.

10.3 Confidential Information may be disclosed by the receiving party pursuant to a government or court order requiring such disclosure, provided that the receiving party has first notified the disclosing party of its receipt of the government or court order to disclose the disclosing party's Confidential Information and has given the disclosing party an opportunity to seek a protective order or other remedy limiting such disclosure without confidentiality obligations.

10.4 Each party confirms that it has implemented a written information security policy and program which is sufficient to meet its responsibilities under applicable data privacy and security laws and regulations and its confidentiality obligations under this Agreement.

10.5 If Customer wishes to reveal any portion of JHA's Confidential Information to any third party provider to Customer, Customer and the third party provider shall first execute JHA's standard three party confidentiality agreement prior to revealing the JHA Confidential Information to the third party provider.

10.6 All information and materials disclosed to the Customer at JHA's User Group conferences shall be treated as JHA's Confidential Information. Nothing in this Section shall be interpreted to preclude or impede Customer's participation in any User's Group with respect to the Software.

## 11. PRIVACY AND SECURITY OF NPI DATA

11.1 In accordance with data privacy and security laws and regulations applicable to this Agreement, JHA shall not disclose or permit access to or use of any NPI Data made available by Customer to JHA for any purposes other than those specifically required to fulfill JHA's contractual obligations with Customer. JHA shall not sell the information regarding Customer's consumers for any reason. In connection with providing services to Customer, JHA shall take all commercially reasonable steps to ensure the privacy and security of the NPI Data and protect against anticipated threats and hazards to the security of the NPI Data. JHA shall take all commercially reasonable steps to prevent unauthorized access to or use of the NPI Data that could result in substantial harm or inconvenience to Customer or its customers or consumers. JHA has implemented policies and procedures to ensure the proper disposal of the NPI Data in accordance with applicable federal and state requirements. In the event any court or regulatory agency seeks to compel disclosure of the information, JHA shall, if legally permissible, promptly notify Customer of the disclosure requirement and will cooperate so that Customer may at its expense seek to legally prevent this disclosure of the information.

11.2 JHA has separately published its data privacy and security compliance commitment to its customers, which corresponds at a minimum to the provisions of this Section 11 as of the effective date of this Agreement. To the extent that additional commitments by JHA are reflected in future published versions of this policy, these additional commitments shall be incorporated as part of this Agreement without further actions by the parties. In no event shall a future published data privacy and security compliance statement issued by JHA lessen or eliminate any of the commitments by JHA stated in this Section 11.

11.3 If a breach of security results in an unauthorized intrusion into JHA's systems which directly and materially affects Customer or its customers or consumers, JHA will take appropriate measures to stop the intrusion; report on the intrusion to Customer within a reasonable time after discovery of the intrusion; subsequently report the corrective action taken by JHA in response to the intrusion; and provide reasonable

assistance to Customer to support any mandatory disclosures about the intrusion by Customer to its customers and consumers required by law. If JHA has notified law enforcement agencies about the intrusion, JHA may delay its notification of the intrusion to Customer until authorized to do so by the law enforcement agencies.

## **12. SOFTWARE DELIVERY**

12.1 If Customer has not contracted with JHA to install the Software at Customer's location, delivery of the Software to Customer shall occur within thirty (30) days following (a) the execution of this Agreement, with respect to the Software originally licensed under this Agreement, and (b) the execution of any follow-on addendum to this Agreement, with respect to additional Software licensed under this Agreement. The Software will be delivered by physical shipment to Customer, or if JHA makes the Software available for electronic delivery, by download on an FTP site designated by JHA for this purpose.

12.2 If Customer has contracted for JHA to install the Software at Customer's location, the delivery of the Software will be scheduled to occur at the commencement of the Software installation project, for use by JHA Professional Services personnel to perform the installation. In such instance the delivery date shall be scheduled to occur not more than one hundred twenty (120) days following the mutual execution of this Agreement or an addendum to this Agreement (whichever is applicable) unless otherwise agreed by JHA. Customer and JHA may agree to stage the delivery and installation of individual Software products or components in phases, in order to allow Customer to begin productive use of those products and components in advance of the remaining Software products and components to be delivered and installed by JHA.

## **13. PROFESSIONAL SERVICES**

13.1 If Customer has contracted for JHA to install the Software at Customer's location, JHA will install the Software at Customer's location specified in Exhibit A or an addendum to this Agreement, and will assist Customer in converting Customer and its Affiliates to production use of the Software. Prior to commencement of the project, JHA and Customer may enter into a separate Statement of Work or services order document which describes the project details and the specifications and requirements applicable to JHA's professional services delivery. Customer shall be responsible for providing all hardware, other third party software, and internet/network/infrastructure components necessary to install and operate the Software products in its production environment, which shall be installed by Customer and operational as of the scheduled commencement date of the Software installation project. All such installation environment components shall meet at a minimum the technical requirements stated in the Documentation relating to the Software. Customer will furnish data needed and requested by JHA to perform the installation and testing of the Software in Customer's test and production environments, and will co-operate with and assist JHA personnel in the installation and conversion of the Software in a timely manner and as reasonably requested by JHA. For the installation and conversion of the Software, Customer agrees to pay JHA the Professional Services fees described in Exhibit A, an addendum, the Statement of Work or the services order (as applicable) and reimburse JHA for reasonable out-of-pocket travel expenses incurred by JHA personnel traveling to and from Customer's location to perform the Professional Services.

13.2 JHA provides the following additional Professional Services for the Software:

- (a) Software Customizations;
- (b) Software training for Customer's employees concerning the operation and use of the Software; and
- (c) Consulting concerning Customer's electronic data needs, problems and solutions which may be addressed through Customer's use of the Software.

For the purchase and delivery of Professional Services not specified in Exhibit A or an addendum to this Agreement, the parties may document these Professional Services requirements in a separate Statement of Work or services order document executed by both parties which

identifies the mutually agreed Professional Services project details, specifications and requirements.

13.3 JHA may utilize subcontractor personnel to supplement its Professional Services delivery resources on a project to be performed by JHA for Customer. JHA will be and remain fully and solely liable and responsible for the performance and activities of its subcontractors participating in Customer's project, and JHA shall ensure that its subcontractors are legally bound to honor and protect Customer's Confidential Information to which the subcontractors have been provided access as part of the project activities, consistent with the confidentiality obligations of JHA under this Agreement. JHA will identify to Customer all subcontractor personnel participating in a Professional Services project to be conducted at Customer's location.

## **14. INSTALLATION VERIFICATION**

The following provisions shall apply when Customer has contracted with JHA for installation of the Software at Customer's location:

14.1 When JHA has materially completed the installation of the Software programs in accordance with the written specifications and requirements of Exhibit A, an addendum to this Agreement, or a Statement of Work or services order executed between the parties (whichever is applicable), JHA will present to Customer an installation certificate, verifying that JHA has installed the Software and that the Software is fully installed, operational and ready to use in Customer's production environment and otherwise meets all of the applicable specifications and requirements. Customer shall have a reasonable opportunity to test and confirm JHA's verification of this compliance with these specifications and requirements, and upon completion of its testing, Customer shall sign and return the installation certificate to JHA. If Customer fails to provide the signed installation certificate to JHA within fifteen (15) business days after JHA has delivered the installation certificate to Customer and Customer has not identified material noncompliance with these specifications and requirements during that period, then the installation shall be deemed to be fully completed and compliance with these specifications and requirements fully achieved by JHA.

14.2 If during the fifteen (15) day business period specified above Customer discovers any material noncompliance with the applicable specifications and requirements, Customer shall immediately notify JHA in writing of the details of the noncompliance, and JHA shall address and resolve the reported noncompliance at no additional charge to Customer and issue a replacement installation certificate to Customer. In this event, Customer shall have a second opportunity within fifteen (15) business days following receipt of JHA's replacement installation certificate to confirm JHA's compliance with these specifications and requirements. If Customer fails to provide the signed installation certificate to JHA within this second fifteen (15) business day period after JHA has delivered the replacement installation certificate to Customer and Customer has not identified material noncompliance with these specifications and requirements during that period, then the installation shall be deemed to be fully complete and compliance with these specifications and requirements fully achieved by JHA.

14.3 If Customer identifies in writing to JHA further material noncompliance with the applicable specifications and requirements during this second fifteen (15) business day period, then the JHA and Customer shall either (a) mutually agree upon an additional course of action required to address and resolve the remaining noncompliance issues, or (b) Exhibit A or the addendum to this Agreement shall be terminated, Customer shall uninstall and return the affected Software and the hardware acquired by Customer from JHA for use with the Software, and JHA shall refund to Customer all fees paid by Customer under Exhibit A or the addendum to this Agreement for the affected Software and under the separate agreement for purchase of the hardware (if applicable).

## **15. SOFTWARE MAINTENANCE**

15.1 During the term of this Agreement, in consideration of Customer's payment of the annual Maintenance fees for the Software, JHA will provide Customer with the following standard Maintenance for the Software:

(a) Updates and minor enhancements of the Software programs which are provided by JHA to other then-current active Maintenance customers of the Software.

(b) Customer support help-desk, for the reporting, handling and resolution of Software Errors discovered by Customer. JHA's standard customer support help desk hours of operation are specified in Exhibit A or the addendum applicable to the Software being maintained.

(c) Correction of Software Errors, including the delivery of program Error fix releases or PTF's.

JHA's provision of standard Maintenance and the applicable service level commitments pertaining to standard Maintenance delivery may be more particularly defined in JHA's published Maintenance policies and procedures relating to the specific Software products involved.

15.2 Customer, at its expense, will provide JHA with remote VPN communication access (or comparable remote access technology) to its server on which the Software has been installed to enable JHA to perform remote Software Maintenance diagnosis and troubleshooting activities. If remote dial up access is provided, Customer shall initiate the call for the remote support session. JHA shall comply with all IT system access and security policies and procedures communicated by Customer regarding authorized access to its IT systems.

15.3 JHA's provision of standard maintenance support described above shall apply only to the then-current major release of the Software and the immediately preceding major release of the Software. Support, if any, offered by JHA for older releases of the Software shall be provided under a separate Professional Services engagement.

15.4 Standard Maintenance excludes Software Errors or other problems caused or contributed to by any of the following:

(a) Errors or performance issues which originate in third party operating system, database system or other software programs which are utilized by Customer in conjunction with the Software;

(b) A modification of the Software not created by JHA or its subcontractors;

(c) Program Errors that were previously corrected by JHA and delivered to Customer in a Maintenance Update release which has not been installed by Customer;

(d) Inadequate hardware memory capacity or any problems with data on tape, disk or diskettes which have been caused by defects in hardware manufacturers programming;

(e) Failure of Customer to install hardware manufacturers operational/system software new Releases and/or Program Temporary Fixes (PTFs);

(f) Program Errors or problems which are the result of improper operator handling or use;

(g) Program Errors or problems which result from any program interface not provided by JHA which has been created or deployed by Customer or a third party with the Software;

(h) Program Errors or problems which result from equipment, software, networks, browsers, telecommunications or other IT infrastructure in Customer's IT environment or operating environment for the Software, which are not certified by JHA in the then-current Documentation to operate with the Software; or

(i) Program Errors or problems which originate from the World Wide Web.

15.5 Standard Maintenance excludes any retrofitting, reintegration, and recoding of any Customization which has been made to the Software in order for the Customization to work with any then-current release of the Software. Any such Professional Services agreed between JHA and Customer shall be documented in a separate Statement of Work or services order executed between JHA and Customer which includes the project specifications and details, scope of services deliverables, and services fees applicable to the Professional Services performed.

15.6 Standard Maintenance provided by JHA for customizable Software application templates which Customer licenses from JHA under this Agreement is expressly limited to delivery of future standard Updates to the unmodified, non-customized version of these Software application templates which JHA may issue and provide to its customers generally who have licensed the Software application templates. Any maintenance of Software application templates which have been customized and deployed by Customer as completed applications in its production environment is outside the scope of standard Maintenance provided by JHA and will require a separate Professional Services engagement and fees for JHA's provision of such maintenance. Any such Professional Services agreed between JHA and Customer shall be documented in a separate Statement of Work or services order executed between JHA and Customer which includes the project specifications and details, scope of maintenance services deliverables, and services fees applicable to the Professional Services performed.

#### 15.7 Maintenance Fees:

(a) Customer will pay JHA the initial annual Maintenance fee set forth in Exhibit A or an addendum to this Agreement. After completion of the first full annual Maintenance term, this annual fee may be increased by JHA by no more than seven percent (7%) per year. Increases resulting from events described in paragraph (b) below are excluded from this limitation. JHA shall give Customer at least sixty (60) days written notice of any Maintenance fee increase, prior to the end of the then-current annual Maintenance term.

(b) The annual Maintenance fee will be increased if and when (i) Customer contracts with JHA for additional Software components; (ii) an increase in the scope of the License is acquired by Customer; (iii) Customization of the Software is contracted for by Customer from JHA; (iv) there is an increase in the net asset size of Customer which would trigger an increase in the Maintenance fees due for the Software, where those metrics are used to determine the amount of the Maintenance fees due from Customer; and/or (v) additional organizations not listed in Exhibit A or an addendum to this Agreement are permitted to access and use the Software covered by the Maintenance fee.

15.8 The commencement date of the initial annual Maintenance term for the Software products shall be:

(a) the date when the Software products have been installed and are ready for Customer's initial use in its production environment, if Customer has contracted with JHA to perform the installation of the Software products; or

(b) the date of JHA's delivery of the Software products to Customer, if Customer has not contracted with JHA to perform the installation of the Software products.

The initial annual Maintenance term commences on the commencement date specified above and expires on the next following June 30. The annual Maintenance term will automatically renew for successive terms of twelve (12) months each commencing on each July 1 thereafter, unless either party gives the following written notice of non-renewal of the annual Maintenance term to the other party in advance of the expiration of the then-current term:

- (a) Notice by Customer to JHA: 30 days
- (b) Notice by JHA to Customer: 180 days

#### 16. BILLING TERMS

16.1 JHA's billing terms are payable net thirty (30) days from Customer's receipt of JHA's correct and valid invoice. Customer will pay JHA the lower of (a) 1.5% interest per month (18% annually) or (b) the highest interest rate chargeable by applicable law, plus all attorney fees and expenses actually incurred by JHA in collecting any delinquent or past due fees, payments or reimbursements of any kind which are valid and rightfully due to be paid by Customer to JHA. JHA reserves the right to halt the delivery of any Software, equipment, Maintenance or Professional Services if Customer is delinquent in the payment of any amounts due JHA, except where such amounts are legitimately in dispute.

16.2 In the event of a phased partial delivery and installation of the Software as specified in Section 12.2 above, JHA will bill Customer in project completion increments and Customer will pay JHA the License

and Maintenance fees pertaining to the Software products and components delivered and installed by JHA for which Customer begins to use productively in its operations, in advance of the remaining Software products and components to be delivered and installed by JHA for Customer.

## **17. INDEMNIFICATION**

17.1 JHA shall defend, indemnify and hold harmless Customer against and from, any and all damages, losses and expenses (including reasonable attorneys fees) arising out of, in connection with, resulting from or based on allegations of, any third party claim that the JHA Software provided hereunder infringes any patent, copyright, trademark, trade secret or other intellectual property right recognized as valid and enforceable in the United States by law, treaty or international convention. JHA shall not be liable for any such infringement claim which arises out of: (a) any combination with the JHA Software with any other non-JHA software; or (b) any modification or customization of the JHA Software by Customer or any third party; or (c) any corrective JHA Software which is delivered by JHA to Customer but is not installed or implemented by Customer; or (d) use of the JHA Software programs not in compliance with its Documentation. In the event of an infringement claim based on or resulting from any of the foregoing, Customer shall indemnify, defend, and hold harmless JHA from and against all claims and actual losses, damages and expenses (including reasonable attorneys fees), related to, resulting from, or arising out of any of the foregoing.

17.2 In the event that Customer is enjoined, or is otherwise prohibited, from using any JHA Software as a result of or in connection with any claim described in Section 17.1, JHA promptly shall, at its sole expense: (a) procure for Customer the right to continue to use the JHA Software; (b) modify the JHA Software so that it becomes noninfringing, without substantially diminishing the form, features, functionality or performance of the JHA Software; or (c) replace the JHA Software with JHA Software that is noninfringing with materially equivalent form, features, functionality and performance. In the event that JHA cannot, after using its best efforts to do so within a reasonable period of time, procure, modify or replace the JHA Software involved then JHA shall terminate Customer's right to use the JHA Software, giving Customer at least ninety (90) days advance written notice of this termination if legally permitted to do so. Upon termination, JHA will refund a prorated amount of the License fees paid by Customer based on a five (5) year straight-line depreciation schedule commencing from the date of installation of the Software involved, and if applicable the unused amount of the then-current annual Maintenance fees paid by Customer for the Software involved.

17.3 With respect to Professional Services performed by JHA at Customer's location, each party shall defend, indemnify and hold harmless the other party against and from, any and all damages, losses and expenses (including reasonable attorneys fees) that the other party may suffer or incur that arise out of, are connected with or result from bodily injuries (including death, no matter when death occurs) or damages to property that are caused by, arise out of, are connected with or result from the negligence or willful misconduct of its own personnel during the course of the conduct of Professional Services at Customer's location.

17.4 If a notice of commencement or threatened commencement of a claim or cause of action is received by a party entitled to indemnification under this Section 17, such party (the "Indemnified Party") shall provide the party that is obligated to provide indemnification under this section (the "Indemnifying Party") with: (i) prompt written notice of each claim received; (ii) control over the defense and settlement of the claim; and (iii) full information and reasonable assistance to settle or defend the claim. Notwithstanding the foregoing, the Indemnifying Party shall not settle the claim without the Indemnified Party's prior written approval if such settlement requires the Indemnified Party to take any action, refrain from taking any action or admit any liability. The Indemnified Party shall be entitled to participate in the defense of any such claim at its own expense.

17.5 THE PROVISIONS OF SECTIONS 17.1 AND 17.2 ABOVE STATE JHA'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR JHA'S INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

## **18. LIMITATION OF LIABILITY**

18.1 Neither party shall be liable to the other party or to any other person, firm or company, for failure to fulfill its obligations hereunder due to the occurrence of an event beyond its reasonable control, including but not limited to acts of God, public disaster, fire, flood, riot, war, terrorism, labor strikes/disputes involving its suppliers, judicial orders/decrees, government laws/regulations, or interruptions of communications, transportation or electricity.

18.2 Any liability of JHA for any loss, damage, or cost hereunder shall be limited to actual direct damages incurred by Customer, but in no event shall the aggregate of liability exceed the total amount of License fees actually paid by Customer to JHA under this Agreement with regard to the Software products involved or affected, nor shall any amount of the liability include any indirect, incidental, consequential, punitive or special damages incurred by Customer. The foregoing limitation on the amount of recoverable actual direct damages shall not apply to JHA's indemnification liability under Section 17 (Indemnification) above or to any action or omission of action which constitutes the gross negligence or willful misconduct of JHA.

18.3 Customer shall be solely responsible for any loss or damage caused to the data of Customer or its customers during the transmission of the data to and from JHA's location, provided that the loss or damage to the transported data is not caused by JHA's negligence in packaging the data for shipment. At its own expense, Customer shall be responsible for contracting the services of a third party common carrier of its choice to perform these delivery services for Customer. JHA's sole responsibility in handling the data shall be to reasonably package the data for return transmission in accordance with industry standards and deliver the packaged data to Customer's selected carrier for its delivery to Customer. If Customer should fail to secure the services of a common carrier to perform these delivery services, JHA may secure the services of a reputable common carrier to perform these delivery services and pay the common carrier for the delivery charges and shipment insurance fees associated with its delivery services, which shall be reimbursed by Customer to JHA.

## **19. TERMINATION**

19.1 The term of this Agreement shall commence on the date of this Agreement shown on the signature page and continue in effect for the term specified in Section 4.2 above unless terminated earlier as provided below.

19.2 Either party may terminate this Agreement for cause by written notice to the other party, upon the occurrence of a breach of this Agreement which has not been cured by the other party following thirty (30) days prior written notice of such breach. If the breach is due to Customer's failure to pay a correct and valid invoice when due without legitimate dispute, this cure period shall be reduced to ten (10) days following receipt of notice of the delinquency from JHA.

19.3 JHA may terminate this Agreement for cause in the event that Customer undergoes voluntary or involuntary bankruptcy, reorganization, receivership, conservatorship, custodianship, assignment for benefit of creditors, seizure of assets, liquidation, dissolution, cessation of business, or action by government authorities which would divest control from the present ownership of Customer or allow this Agreement or individual Licenses to be assigned to other parties without JHA's written consent.

19.4 In the event JHA ceases to do business, the successor to JHA's assets will be bound by this Agreement the same as JHA, and Customer may continue to use the Software under all the terms and conditions of this Agreement. If there is no successor to JHA's assets, then the Software shall become the non-exclusive proprietary product of Customer subject to the confidentiality restrictions described in Section 7 (Trade Secrets) above. If JHA has ceased to do business, Customer may reveal Software and/or materials to third parties for the sole purpose of maintenance and customization of the Software for the sole use of Customer, provided that the third parties have agreed to be bound by similar written confidentiality restrictions with respect to the Software.

19.5 In the event of JHA's termination of this Agreement for cause, Customer shall immediately cease using all copies of the Software in its possession, uninstall the Software from all locations, and return the Software copies to JHA or destroy the Software copies and certify this



destruction to JHA in writing by an officer or senior manager of Customer.

## **20. SOURCE CODE ESCROW**

20.1 For all JHA Software which is delivered to Customer in an object code format, JHA shall maintain current versions of the source code of the JHA Software ("Source Code") in a third party source code escrow arrangement with an independent escrow agent ("Escrow Agent"). JHA shall enter into and maintain a written escrow agreement with the Escrow Agent which will provide for the Escrow Agent to release to Customer the Source Code for the JHA Software in the event that JHA ceases to do business, provided that Customer has a then-current active and paid-up Maintenance contract for the Software affected with JHA.

20.2 With respect to Third Party Software, JHA will provide reasonable assistance to Customer for establishing Customer's participation in any source code escrow arrangement offered by third party Software owners for their third party Software products. All contractual participation in the third party Software source code escrow arrangement shall be directly transacted between Customer and the third party Software owner and its source code escrow agent.

## **21. AUDIT**

Not more often than once each calendar year, JHA or its third party auditor may at JHA's expense conduct an audit at Customer's site upon at least thirty (30) days prior written notice to verify that Customer's use of the Software conforms to the terms of this Agreement. If an audit uncovers wrongful use or copying of the Software by Customer, Customer shall pay to JHA the then-current License and Maintenance fees for the additional license usage. Further, if Customer's wrongful copying or usage of the Software exceeds 110% of its licensed Software installation, Customer shall reimburse JHA for its reasonable costs of conducting the audit.

## **22. INSURANCE**

At its own expense, JHA shall secure and maintain throughout the term of this Agreement insurance policies provided by insurance carriers with an A.M. Best Financial Strength Rating of at least "A", covering JHA's activities under this Agreement and reflecting the following minimum policy coverages and limits:

- (a) Commercial General Liability: \$2,000,000 per occurrence
- (b) Automobile Liability: \$1,000,000 combined single limit
- (c) Excess Liability: \$10,000,000 per occurrence
- (d) Workers Compensation: Statutory limits; no coverage in monopolistic states—in those states, Employers Liability coverage applies with a limit of \$500,000
- (e) Employee Dishonesty: \$10,000,000

Upon request, JHA will provide Customer with a current certificate of liability insurance evidencing these policy coverages and limits and showing Customer as an additional insured.

## **23. GENERAL PROVISIONS**

23.1 The parties are and shall remain independent contractors and shall have no legal right or authority to make any binding commitments on behalf of the other party. Each party shall be solely responsible for the provision of insurance, workers compensation and other benefits to its own employees.

23.2 Any notice under this Agreement shall be in writing and shall be deemed delivered when actually received, or five days after it is sent by United States Postal Service certified mail, return receipt requested, or by overnight express mail, with proof of delivery retained, when addressed to the other party at its above address, which may be changed by written notice. A copy of any written notice of breach or termination of this Agreement given by Customer to JHA shall be delivered to the attention of JHA's Legal Department at the same address listed above.

23.3 No action arising out of this Agreement may be brought by Customer or JHA more than two (2) years after the cause of action has accrued and the injured party has actual knowledge of the accrual. The prevailing party in any litigation conducted in relation to this Agreement

shall be entitled to recover its reasonable attorneys fees from the other party.

23.4 This Agreement supersedes all prior license or use agreements for the Software, if any, and contains the entire agreement between the parties with respect to the transactions contained herein. This Agreement shall be modified or altered only by a written instrument signed by authorized representatives of both parties. The attached Exhibits and any addenda executed under this Agreement are part of this Agreement.

23.5 The headings of each Section in this Agreement are provided only for convenience and shall not be deemed controlling.

23.6 This Agreement shall be binding upon and inure to the benefit of the parties and their respective assigns and successors.

23.7 Except as provided below, this Agreement shall not be transferable or assignable by Customer without the prior written consent by JHA, which shall not be unreasonably withheld. Customer may assign its rights and obligations under this Agreement in their entirety to a successor entity which acquires controlling ownership interest in Customer, continues to operate the business of Customer, and is contractually bound to perform all of the obligations and liabilities of Customer under this Agreement. Customer or the successor entity shall provide written notice of the assignment to JHA within thirty (30) days following the effective date of the assignment. If the assignment permits the successor entity to exercise an expanded use of the Software beyond the scope of the Software license acquired by Customer from JHA under this Agreement, then the successor entity shall pay to JHA any additional Software license and Maintenance fees due for such expanded use, as an express pre-condition to the successor entity's use of the Software in that manner.

23.8 This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without reference to its conflict of laws provisions, and applicable U.S. federal laws and regulations. The application of the United Nations Convention on Contracts in the International Sale of Goods is expressly excluded from this Agreement.

23.9 Throughout the term of this Agreement and for a period of one (1) year thereafter, neither party shall proactively and directly solicit or hire for employment any of the personnel of the other party who have been directly involved in a Professional Services project conducted under this Agreement, without the prior written consent of the other party. The foregoing restriction shall not apply to the employment of the other party's personnel which occurs solely through general employment search vehicles (e.g. Monster.com) or employment notices or solicitations published publicly (e.g. through corporate website postings or employment advertisements).

23.10 The provisions of Sections 5, 7, 9, 10, 11, 17, 18, 19, 20, 21 and 23 shall survive the expiration or termination of this Agreement.

23.11 If any of the provisions of this Agreement are invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted. Such omission does not change the intent or binding nature of any or all of the rest of this Agreement. A party's failure to enforce any right or duty under this Agreement against the other party in any instance shall not be deemed to constitute a waiver of that party's right to enforce such right or duty against the other party in the future.

23.12 Any purchase orders, order acknowledgements or other form documents issued by either party to document transactions completed under this Agreement shall be utilized for administrative purposes only. No terms and conditions contained in any such form documents shall supplement or modify the terms and conditions of this Agreement and exhibits, addenda, Statements of Work or services orders executed between the parties under this Agreement.

23.13 This Agreement and individual Exhibits, addenda, Statements of Work and services order documents may be executed by the parties by applying manual or electronic signatures of its authorized representatives to original documents or facsimile, scanned or other electronic copies of original documents and transmitted by physical or electronic means for this purpose. For legal evidentiary purposes, a facsimile, scanned or other electronic copy of this Agreement bearing the



signatures of the authorized representatives of both parties shall be accepted as an equivalent to a signed original copy of the document.

23.14 The provisions of this Section shall apply only in the sole event that Customer is not headquartered in the United States of America or in the event that any JHA Software, Maintenance or Professional Services are delivered to Customer outside of the United States. In that event the parties agree that all courts of the State of Missouri, USA, shall have jurisdiction over the subject matter and over the parties, and venue in any suit, claim, proceeding, dispute or disagreement arising from or relating in any way to this Agreement. Customer hereby agrees that by entering into this Agreement it specifically consents to the jurisdiction and venue of all courts of the State of Missouri, USA, hereby waives notice and service of process, and further agrees that valid service of process in any Missouri court proceeding is confirmed seven (7) days after notice thereof is sent to Customer at its address contained herein via United States Postal Service Registered Mail. Customer also specifically agrees that any final judgment entered against Customer may be registered and enforced against Customer in any other foreign country or jurisdiction as though such final judgment was rendered by the courts or other legal process of that country or jurisdiction.

*< End of Standard Terms and Conditions >*

## EXHIBIT A

### PRODUCTS AND SERVICES SCHEDULE

#### ProfitStars® RemitPlus® Software

**Customer:** City of Lodi, 221 W. Pine Street, Lodi, CA 95240

**1. Products and Services:**

- 1.1 **Software License:** The following Software components are licensed by JHA to Customer for installation and internal use in Customer's production environment on Customer's computer system:

**ProfitStars® RemitPlus Software—Annual License Fee Option**

ProfitStars® RemitPlus Software—Annual License Fee Option					
Description		# of Copies	Base Software License Fee	Software Installation Fee	Annual License Fee
JHA Software:					
RemitPlus® Software		1	\$9,750.00	\$1,800.00	\$1,462.50
Concurrent Seat License:	5 concurrent seats				
Initial Item Processing Volume Tier License:	Up to 200,000 Items processed per Annual License Fee term				
MultiUser		2	\$2,000.00	\$0.00	\$300.00
Electronic Deposit		1	\$2,000.00	\$0.00	\$300.00
ScanForm (up to 190 DPM)		1	\$250.00	\$0.00	\$37.50
Third Party Software:					
Parascript CheckPlus® Software (CAR/LAR) – Server Version		1	\$1,375.00	N/A	\$206.25
Volume Tier License:	Up to 500,000 Counts processed per Year				
Total Net Fees Due:			\$15,375.00	\$1,800.00	\$2,306.25

- 1.2 **Third Party Services:** The following Third Party Services are licensed by JHA to Customer for installation and internal use in Customer's production environment on Customer's computer system:

**ProfitStars RemitPlus: Orbograph Convene Third Party Services**

Description of Services	Install/One-Time Fee	Fee per 1,000 Key Strokes
<b>Third Party Services:</b>		
Orbograph Convene Checks	N/A	\$1.80
Orbograph Convene Forms	N/A	\$1.80

**1.3 Annual License Fee Option:**

(a) The Annual License Fee option allows Customer to acquire a License for the Software products listed in this Schedule on an annually renewable term basis. The Annual License Fee shown above includes Customer's licensed use of the Software in accordance with the licensing terms described in this Schedule and JHA's provision of standard Maintenance for the Software during the annual license term. All JHA Software and Third Party Software products shown in the table above are licensed by JHA to Customer on an Annual License Fee term basis, unless a different license term period is specified above. The initial Annual License Fee term will commence upon the following date:

- (1) If Customer has contracted for JHA to perform the installation of the Software at Customer's site, then the Annual License Fee term will commence on the Implementation Date.
- (2) If Customer has not contracted for JHA to perform the installation of the Software at Customer's site, then the Annual License Fee term will commence on the date that JHA's delivers the Software to Customer, or the date that Customer downloads the Software programs from JHA's FTP site, whichever is applicable.

(b) After completion of the initial Annual License Fee term, JHA reserves the right to prorate the Annual License Fee term so that it will commence on each July 1 thereafter. Approximately sixty (60) days in advance of the expiration of the current Annual License Fee term, JHA will issue an invoice to Customer for the next following Annual License Fee term, which will be due and

payable by Customer no later than the first day of the next following Annual License Fee term. If Customer fails or declines to pay this renewal Annual License Fee term invoice received in a timely manner from JHA, then Customer's license of the Software shall automatically terminate without any notice or action by either party. In addition, either party may elect not to renew the Annual License Term applicable to any of the Software by giving the following advance written notice of non-renewal to the other party:

- (1) Notice of non-renewal by Customer to JHA: Thirty (30) days in advance of the expiration date of the current Annual License Fee term.
- (2) Notice of non-renewal by JHA to Customer: One hundred eighty (180) days in advance of the expiration date of the current Annual License Fee term, provided however that JHA shall not exercise this right of non-renewal prior to the occurrence of at least three (3) full Annual License Fee terms for the Software affected.
- (c) After completion of the initial Annual License Fee term, JHA reserves the right to increase the Annual License Fee applicable to the Software products and licenses covered by this Schedule with respect to any renewal Annual License Fee term by not more than ten percent (10%) over the then-current Annual License Fee. JHA shall deliver to Customer advance written notice of any such fee increase not less than ninety (90) days prior to the expiration of the then then-current Annual License Fee term.

#### 1.4 RemitPlus Software License:

(a) Licensing and Pricing Metrics: JHA RemitPlus Software is licensed on the basis of two licensing metrics (the number of concurrent seats authorized to access and use the RemitPlus Software, and Item processing volume tier) and priced on the basis of the base Software license fee ("Base License Fee" or "BLF") shown above and a recurring renewable Annual License Fee shown above, for the cumulative volume of Items (defined below) which are processed during each Annual License Fee term of this License.

- (1) Base License Tier: The Base License Fee is calculated initially on the basis of the maximum number of concurrent seats on workstation computers owned or leased by of Customer and its Affiliates that will be authorized to access and use the RemitPlus Software in their operations, which is determined as of the date of this License purchase. The license size of this maximum number of concurrent seats is identified in Section 1.1 above. For the purpose of this licensing calculation, a "seat" is defined as a single workstation computer on which the client version of the RemitPlus Software has been installed. The licensed number of concurrent seats represents the maximum number of seats that can simultaneously access and use the RemitPlus Software.
- (2) Item Processing Volume Tier: If during the course of any Annual License Fee term Customer's use of the RemitPlus Software reaches the maximum limit of the Item processing volume tier license previously acquired by Customer, Customer will be required to purchase an Item processing volume tier license upgrade for the Remit Plus Software in order to enable the Remit Plus Software to process a higher volume tier of Items covering the remainder of the then-current Annual License Fee period and each renewal Annual License Fee term thereafter. The Remit Plus Software License upgrade fee payable by Customer in this instance will be priced at the then-current standard JHA Base Software license fee and Annual License Fee applicable to the higher tier volume of Items to be processed, as selected by Customer, against which will be applied a full credit of the Base Software License fee and the then-current Annual License Fee already paid by Customer, which amount will be prorated to cover the remaining period of the then-current Annual License Fee term.

(b) The term "Item" used in this licensing metric is defined as a single payment transaction processed by use of the RemitPlus Software, including one or more checks and one or more accompanying payment documents ("coupons"), such as payment stubs, deposit tickets and remittance coupons. The Item count is determined in accordance with the following principles:

- (1) The primary determinant of the Item count in a single payment transaction is the number of checks being processed. One check equals one Item count, regardless of the number of coupons processed with the check. For example, processing one check with six coupons results in an Item count of one; processing six checks with one coupon results in an Item count of six.
- (2) If only coupons and no checks are being processed as part of the payment transaction, then the determinant of the Item count in the payment transaction is the number of coupons being processed. For example, if no checks and six coupons are processed in a single payment transaction, the Item count equals six.
- (c) Customer's failure to pay a Base License Fee upgrade fee or an Item Processing volume tier License upgrade fee when due will result in automatic termination of Customer's License of the Software.

(d) Projects: The RemitPlus Software license shown above includes the right for Customer to deploy up to five (5) Projects using the RemitPlus Software. Deployment of additional Projects by Customer will require the purchase of a separate license upgrade of the RemitPlus Software.

#### 1.5 Parascript Software License: If Customer has licensed the Parascript Software product(s) identified above as Third Party Software, the following terms and conditions apply to that License:

(a) The Parascript Software (for which JHA is an authorized reseller) is owned by Parascript, LLC and sublicensed by JHA to Customer for Customer's use solely in conjunction with the JHA RemitPlus Software. The Parascript Software is licensed on the basis of the following licensing metrics:

- (1) The hardware platform upon which the Parascript Software will be installed and used (e.g. on a desktop scanner or on a server computer);

- (2) The number of copies of the Parascript Software to be installed by Customer on the designated hardware platform for use with the RemitPlus Software; and
- (3) The number of Counts processed by Customer using the Parascript Software during per each Year, calculated in accordance with the formula set forth in clauses (b) and (c) below.

(b) The term "Count" used in this licensing metric is defined and tracked by Parascript LLC and means a single instance in which the Parascript Software is used to read a character, field or document and results in a billable unit. A billable unit may also be a preset quantity of "Counts" (e.g. a volume tier). Parascript LLC has assigned Count values for individual field types which may be read on a document of a check or coupon being processed. Parascript LLC's schedule of Count values will be communicated to Customer on JHA's customer website; by publication in the Documentation that applies to the Parascript Software; or provided in a written document if requested by Customer. The term "Year" used in this licensing metric is defined as a 12 calendar month, which period is set by Parascript LLC in its license key for the Parascript Software.

(c) Each copy of the Parascript Software is licensed for Customer's use solely with the RemitPlus Software. Customer's installation and use of the Parascript Software with any other JHA or non-JHA Software product will require Customer's purchase of a separate Parascript Software license for such use.

1.6 Orbograph Convene Services: If Customer utilizes the Orbograph Convene Services identified in Section 1.2 above, the following terms and conditions apply to the Orbograph Convene Services:

(a) The Orbograph Convene Services (for which JHA is an authorized reseller) is owned by Orbograph Ltd. ("Orbograph") and its licensors and is provided by Orbograph to Customer for Customer's use solely in its internal business operations and in conjunction with the Customer's licensed RemitPlus Software.

(b) The fees shown for the Orbograph Convene Services are calculated and billed by JHA to Customer on a calendar monthly basis, based on the number of key strokes actually processed by Customer using the Orbograph Convene Services.

(c) The following supplemental provisions are included in this Agreement or Addendum between JHA and Customer with regard specifically and solely to the Orbograph Convene Services:

- (1) All intellectual property rights to the Orbograph Convene Services are owned exclusively by Orbograph and its licensors. Customer is granted the non-exclusive right to use the Orbograph Convene Services solely in conjunction with the licensed RemitPlus Software. Any other intended use of the Orbograph Convene Services requires the prior written approval of JHA or Orbograph and may be subject to the payment of additional fees for such additional use of the Orbograph Convene Services.
- (2) Orbograph has warranted to JHA and JHA warrants to Customer that the Orbograph Convene Services will conform in all material respects to the written descriptions and specifications published by Orbograph for the Orbograph Convene Services. Orbograph does not warrant that the operation of the Orbograph Convene Services will be error-free or will meet Customer's requirements. JHA's and Orbograph's sole responsibility and Customer's sole remedy under this warranty will be for Orbograph to repair or replace any Orbograph Convene Services which do not conform to the foregoing warranty and are confirmed by Orbograph to be defective. If Orbograph does not repair or replace the defective Orbograph Convene Services, Customer may terminate its use of the Orbograph Convene Services. JHA does not make or extend any other separate warranties, guarantees, indemnities or liabilities to Customer with respect to the Orbograph Convene Services. EXCEPT FOR THIS EXPRESS LIMITED WARRANTY, NEITHER JHA NOR ORBOGRAPH MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ORBOGRAPH CONVENE SERVICES, AND JHA AND ORBOGRAPH EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED OR ARISING BY STATUTE, CUSTOM OR TRADE USAGE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- (3) IN NO EVENT SHALL EITHER JHA OR ORBOGRAPH BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR LOST DATA) OR ANY INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND, EVEN IF JHA OR ORBOGRAPH HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL JHA'S OR ORBOGRAPH'S AGGREGATE LIABILITY IN CONNECTION WITH THE ORBOGRAPH CONVENE SERVICES FOR ALL CLAIMS (WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE) EXCEED THE AMOUNTS PAID BY CUSTOMER TO JHA FOR THE ORBOGRAPH CONVENE SERVICES DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF SUCH CLAIM.
- (4) For the limited purpose of enforcing or protecting its rights to the Orbograph Convene Services directly against Customer, Orbograph and its licensors shall be an intended third party beneficiary of this Agreement or Addendum between JHA and Customer. Customer acknowledges that Orbograph and its licensors shall have no responsibility or liability with regard to JHA's obligations to Customer under this Agreement or Addendum.

1.7 Server-Based Software Licenses: Unless otherwise specifically indicated in the table above or this Exhibit A, all JHA Software and Third Party Software products listed in the table above are for installation and use of the JHA Software and Third Party Software products on a server computer owned or controlled by Customer.

2. Software Deliverables: JHA will furnish to Customer one copy of the object code software programs of the JHA and Third Party Software product(s) listed above which will be installed on Customer's IBM-compatible computer, and one set of the standard software user documentation for the Software product(s). The installation location of the Software shall be at the address for Customer first shown above, unless a different address is indicated in this Exhibit.

3. **Third Party Software Products:** If Third Party Software products are specified above, the Third Party Software products are owned and licensed by their respective owners, and Licensee's licensed right to use these software products will be governed by the software end-user license agreement accompanying the third party software programs, which includes the third party owner's standard product warranties, indemnities and liabilities applicable to its software product. JHA does not make or extend any separate product warranties, guarantees, indemnities or liabilities with respect to these third party software products.

4. **Professional Services:**

4.1 **Software Installation Services:** JHA shall perform the installation of the Software at Customer's location first identified above, commencing on a date mutually agreed by the parties. Customer shall be responsible for providing all hardware, other third party software, and internet/network/infrastructure components necessary to install and operate the Software products in its production environment, which shall be installed by Customer and operational as of the scheduled commencement date of the Software installation project. If contemporaneously with this Exhibit Customer has acquired hardware from JHA under a separate hardware purchase agreement upon which the Software will be installed, JHA will install this hardware as part of the Software installation project and fees quoted above.

4.2 **Reimbursable Travel Expenses:** The professional services fees quoted in this Exhibit do not include reimbursable travel expenses of the JHA professional services personnel who travel to and from Customer's site to perform these services, which will be invoiced to and paid by Customer.

5. **Annual Software Maintenance Support:**

5.1 **JHA Software Products:** Upon payment of the Annual License Fee for the JHA Software, JHA will provide standard Maintenance for the JHA Software to Customer in accordance with the terms of the Agreement. The JHA customer support center for the Software products listed in Section 1 above will be available for the receipt and handling of Customer's Maintenance Services requests including Software Error reports during the following hours of operation:

Product Group	Hours of Operation
Remit Plus Software	8:00 am through 5:00pm, Central US time zone

All times listed are for Monday through Friday, excluding standard US banking holidays published by the US Federal Reserve System.

5.2 **Third Party Software Products:** In consideration of Customer's payment of the Annual License Fee for Third Party Software, JHA will provide the following standard Maintenance for the Third Party Software:

- (a) The JHA customer support organization will receive and process Error incident reports submitted by Customer with regard to the operation of the Third Party Software, during the same hours of operation specified above for JHA Software. JHA will perform a basic level of Error troubleshooting and resolution activities with respect to Errors determined by JHA to be caused by the Third Party Software and escalate the Error incident to the owner of the Third Party Software for handling and resolution if the Error requires access to the source code of the Third Party Software or advanced technical expertise with the Third Party Software programs which is beyond JHA's technical competency to resolve.
- (b) JHA will provide to Customer periodic standard Update releases of the Third Party Software issued by the owner of the Third Party Software to JHA, which have been tested and certified to interoperate with the RemitPlus Software.

6. **Payment Terms:** Customer shall pay the fees shown above to JHA, together with reimbursement of JHA's reasonable, actual out-of-pocket travel expenses incurred by its Professional Services personnel traveling to and from Customer's location to deliver the Professional Services specified in this Exhibit. These fees shall be due to JHA on the following schedule and paid by Customer within thirty (30) days following receipt of JHA's invoice:

Transaction	Payment Due by Customer
Base Software License Fees and Initial Annual License Fees	100% on the Implementation Date
Professional Services Fees	100% on the Implementation Date

7. **Supplemental Terms and Conditions:** The following terms and conditions apply to the Software listed above:

7.1 **Remit Plus Software Products:**

- (a) The Software programs will be delivered by JHA to Customer in object code format only.
- (b) The initial License copy of the Software shall be installed and used by Customer solely in its production environment. In addition to this primary production License copy of the Software acquired by Customer, Customer may acquire from JHA additional License copies of the same Software product or product component for Customer's internal use in conjunction with its production environment License copy which the Customer will use (1) as additional production environment License copies, and/or (2) solely for non-production purposes, such as development, test or disaster recovery.
- (c) The Software requires the use of third party software, such as client and server operating systems, relational database systems, communications/networking systems, and internet browsers in order to be fully functional. In

addition, the Software requires appropriate computer hardware with an adequate amount of memory as indicated in JHA's published specifications for the Software. Customer is responsible for obtaining and maintaining such hardware and third party software for use with the Software. Any purchase of the hardware and licensing of the third party software through JHA shall be documented in a separate hardware sales agreement executed between JHA and Customer.

*< End of Exhibit A >*

## REMOTE DEPOSIT SERVICES AGREEMENT

This Remote Deposit Services Agreement ("Agreement") is entered into between Farmers & Merchants Bank of Central California ("Bank") and City of Lodi ("Customer"). This Agreement is intended to work in concert with the Customer Agreement & Schedule of Charges Effective May 15, 2009 (as amended) and the Letter from Bank to City of Lodi dated June 1, 2011 but the terms of those agreements are not incorporated herein. In the event of conflicts between the terms of this Agreement and the terms of the Customer Agreement & Schedule of Charges Effective May 15, 2009 (as amended) and the Letter from Bank to City of Lodi dated June 1, 2011, the terms of this Agreement shall control.

1. **Background.** Bank offers the Product and Services for the electronic clearing of items, which would enable Customer to transmit paper items converted to electronic items to Bank for processing and deposit into the account of Customer. Customer desires to use the Product and Services to clear checks electronically.
2. **Definitions.** Capitalized terms defined in this Agreement shall have the meanings indicated in this Agreement (including in Exhibit A).
3. **Services.** Bank will provide to Customer the Product and Services described in this Agreement to enable Customer to transmit Items to Bank to be cleared as Substitute Checks or Image Exchange Items. Bank and Customer will comply with the terms and provisions of this Agreement with respect to the use of the Product and the performance of the Services. If Customer is approved by Bank to transmit Items to Bank to be cleared as ACH entries, a new or separate ACH agreement ("ACH Agreement") will be required to be executed by Customer and Bank. In that event, unless otherwise provided, all ACH entry transactions will be governed by the ACH Agreement and all Substitute Check and Image Exchange Item transactions will be governed by this Agreement.
4. **Implementation.** Customer will capture digitized images of Items using equipment provided by or through Bank or other equipment acceptable to Bank, and will ensure that the output files are compatible with the Product. Customer may also be required to use such Software as Bank may reasonably require in connection with the transmission of output files to Bank. Any Software deemed necessary by Bank shall be maintained by Customer, except as the parties may otherwise agree in writing, and must meet technical specifications acceptable to Bank. Customer shall otherwise transmit its output files as provided in the Documentation.
5. **Customer Responsibilities.** In connection with the Product and the Services, Customer shall comply with the following:

### 5.1. Customer's General Responsibilities.

5.1.1. Customer shall maintain one or more bank accounts at Bank for the receipt of deposits of Items.

5.1.2. Customer shall be responsible for training its own employees in the use of the Product and Services.

5.1.3. Customer only will submit Items for processing to Bank that meet the definition of "Item" in Exhibit A and will ensure that the Items scanned meet the ANSI X9.37 standards for image quality required by Regulation CC, or other standards established by Bank or applicable law. Bank's processing of any Items that do not meet the definition on Exhibit A ("Non-qualifying Items") shall not constitute a waiver by Bank or obligate it to process such Non-qualifying Items in the future. Bank may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.

5.1.4. Bank reserves the right, upon written notice from Bank to Customer, to prohibit Customer from attempting to scan and transmit to Bank any Item which is drawn on a deposit account of Customer at Bank or any other financial institution, or a deposit account of any business entity of which Customer is a principal, officer or authorized signer. Customer agrees to comply with any such written notification from Bank.

5.1.5. Customer will not attempt to scan and transmit to Bank any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with the Bank.

5.1.6. Customer will (i) ensure that Items are restrictively endorsed or otherwise processed to permit only financial institutions to acquire rights of a holder in due course in the collection process of Items, (ii) handle, process, maintain and destroy Original Checks and Electronic Items as set forth in the Documentation, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item or its corresponding Electronic Item more than once.

5.1.7. Customer will use the Product and Services, including the entering, processing and transmittal of Items, in accordance with the Documentation.

5.1.8. Customer will retain each Item in accordance with the Documentation. If not directed otherwise and except as provided in paragraph 5.1.6, Customers will store Items in a safe and secure environment for such for a minimum of 15 days and not to exceed 90 days after such Item has been digitized and processed. Customer will promptly (but in any event within 5 business days) provide any retained Item (or, if the Item is no longer in existence, a sufficient copy of the front and back of the Item) to Bank as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any Check or as Bank otherwise deems necessary. Customer will use a commercially reasonable method to destroy Items after Customer's retention period has expired. Bank reserves the right to approve or reject any method used by Customer for the destruction of Items and otherwise reserves the right to determine the method of destruction to be used by Customer.

5.1.9. Customer understands and agrees that an Item or its corresponding Electronic Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will be returned to Customer and Customer's account charged for the amount of the Item or corresponding Electronic Item plus any associated fee as disclosed in Bank's schedule of fees. Bank's right to charge the account of Customer will apply without regard to whether the Item or corresponding Electronic Item is timely returned to Bank or whether there is any other claim or defense that the Item or Electronic Item has been improperly returned to Bank.

5.1.10. Customer shall maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform its obligations under this Agreement.

## **5.2. Remote Capture Service.**

5.2.1. Customer's Account will receive credit through the deposit of Items that Customer provides to Bank.

5.2.2. Customer will create images of Items at Customer's location by use of scanning hardware and Software approved or provided by Bank. Customer will enter all amounts and any other required information correctly.

5.2.3. The electronic images of Items will be transmitted by Customer to Bank, or Bank's authorized processor, over the internet through a web-based interface. It is Customer's obligation to ensure that Customer has a valid Internet connection to use the Service and is using the latest version of Internet Explorer or other Internet browser accepted or required by Bank.

5.2.4. Bank will maintain the appropriate Account for Customer to receive credit and provide other specific information required by Bank related to the Service. All deposits are accepted subject to Bank's verification and final inspection and may be rejected by Bank in Bank's sole discretion. All deposits are subject to the terms of the Deposit Account Agreement.

**6. Compliance with Law.** Customer shall comply with all laws, rules, and regulations applicable to Customer, to the business and operation of Customer, and to the Products and Services, including, without limitation, Regulation CC, the Uniform Commercial Code and any rules established by an image exchange network through which Image Exchange Items are processed pursuant to this Agreement. Customer shall have the responsibility to fulfill any compliance requirement or obligation that Bank and/or Customer may have with respect to the Service under all applicable U.S. federal and state laws, regulations, rulings,



including sanction laws administered by the Office of Foreign Assets Control, and other requirements relating to anti-money laundering, including but not limited to, the federal Bank Secrecy Act, the USA PATRIOT Act and any regulations of the U.S. Treasury Department to implement such Acts, as amended from time to time.

## **7. Communications Security Software.**

7.1. Customer agrees to use the communications security Software as Bank may reasonably require in connection with the transmission of output files to Bank. Bank may, from time to time, require and change the Software required for this purpose, provided such change does not result in any additional license or maintenance fees payable by Customer, upon 30 days advance notice to Customer.

7.2. Initially, Bank will provide to Customer a capture device for Customer to scan Items for conversion to digitized images and may also provide to Customer, at any time after execution of this Agreement, Software to be used in connection with the Services.

7.2.1. Customer will implement and use the capture device and any required Software, as set forth in the Documentation and any applicable materials relating to the Documentation to transmit output files to Bank.

7.2.2. Customer acknowledges that (i) its license to any Software required for the Service is directly from the Software provider, pursuant to the license agreement that appears when any such Software is electronically accessed by Customer, (ii) Bank may provide certain "first level" support to Customer with respect to the Software, but that Bank will have no responsibility, for maintenance, support, infringement protection, or otherwise, to Customer with respect to the Software, and (iii) Customer will look strictly to the Software provider, or its successors, with respect to any issues concerning the Software that cannot be satisfactorily resolved with Bank's assistance.

7.2.3. Customer will use any required Software solely for the purpose of transmitting output files to Bank consistent with this Agreement and not for communications with any other party. Customer will not allow access to the Software or the use of the Product by any person other than Customer, and will not process Items except Items arising from a transaction or obligation between Customer and its direct payor. Customer will not process any third-party Items. Customer represents, agrees and warrants to Bank that (except as otherwise specifically disclosed in writing to Bank) Customer is not now engaged, and will not during the term of this Agreement engage, in any business that would result in Customer being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations.

7.2.4. As set forth in Paragraph 13.2 below, Customer will promptly return the capture device, all copies of any required Software, and the Documentation, including materials related to the Documentation, to Bank upon termination of the Agreement.

## **8. Bank Rights and Responsibilities.**

8.1. For all Items processed by Customer pursuant to this Agreement, either (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Image Exchange Items will be presented for payment through image exchange networks. Bank may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Documentation and as otherwise established by the Bank from time to time.

8.2. Unless otherwise agreed by Customer and Bank, Bank will process any returned Items in accordance with applicable law and the Customer Agreement & Schedule of Charges Effective May 15, 2009 (as amended) and the Letter from Bank to City of Lodi dated June 1, 2011.

8.3. Subject to Paragraph 8.5 below, availability of credit from Items processed under this Agreement will be subject to the availability schedule of Bank, which may be amended without notice.

8.4. Bank may at its sole option, at any time and from time to time, refuse to process Items or any corresponding Electronic Item. However, Bank will manually review refused items for approval unless review shows the items cannot be approved. Bank may from time to time establish prospective exposure limitations and assign them to Customer upon immediate notification to Customer.

8.5. In addition to any other rights Bank may have as regards the accounts of Customer, Bank may hold and use funds in any account following termination of this Agreement for such time as Bank reasonably determines that any Item or Electronic Item processed by Bank prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Bank may be responsible. Without limitation, Customer recognizes that under the Rules, the UCC, Regulation CC and the rules of any image exchange network Bank's representations and warranties as regards Electronic Items and Substitute Checks may expose Bank to claims for several years following processing of the Electronic Items or Substitute Check.

8.6. Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bank's control. In the event of any of the foregoing failure or delays, Customer acknowledges that it may instead deposit directly with Bank any Original Items for processing and presentment, provided such Original Items have not been previously imaged and processed in connection with the Product and Services. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank's having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Bank's otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

8.7. Customer shall have a normal security reserve of \$50,000.00 for purposes of the offset rights set forth in this paragraph ("Normal Security Reserve"). If Customer's accounts fall below the Normal Security Reserve, Customer shall immediately fund the reserve amount with good funds. Bank may withhold and use any amounts due to Customer to maintain the Normal Security Reserve amounts. To secure all obligations of Customer to Bank arising from this Agreement, Customer grants to Bank a security interest in all accounts of Customer at Bank, all funds in those accounts, any reserve accounts or funds therein, all Items and Entries (including any funds in process of settlement), whether now or hereafter established by or for the benefit of Customer at Bank, and all proceeds of the foregoing. Bank's security interest will survive after termination of this Agreement. This security interest shall be limited to the value of the Normal Security Reserve and is supplemental to and not in lieu of the security interest granted by Customer to Bank under any other agreement. In the event a single item is processed in excess of the Normal Security Reserve, Bank's security interest shall be temporarily increased to the full amount of that single item until 60 days after that single item has cleared, at which time the security interest shall revert to the Normal Security Reserve amount.

8.8 Bank has the right, upon reasonable notice, to audit, review and require specific controls in connection with Customer's policies, practices, procedures, and compliance with this Agreement for the Product and Service, including but not limited to, on-site inspection of any Customer facility, such as an office or data center, as it deems necessary or desirable, arising out of Customer's use of the Product and Services, Customer's management, operational controls, processes, risk management practices, staffing, training, support and information technology, infrastructure and other specific risks and practices of Customer, such as Services Customer may provide to third parties ("users"). Customer will also promptly provide additional information, as reasonably requested by Bank, relevant to the Product and the Service, including information about users.

As provided in Section 16, BANK MAKES NO WARRANTY OR REPRESENTATION, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, PRODUCT, REVIEWS OR REQUIREMENTS UNDER THIS SECTION 8."

**9. Processing Times.**

**9.1.** The Service is available for use only on business days during the times set forth in the Documentation, except during maintenance periods, or such other hours as established by Bank from time to time. Transmissions processed after these hours on a business day, or on any day that is not a business day, are treated as occurring on the next business day.

**9.2.** Items will be processed and ready for presentment by Bank after Bank receives all good digitized images and associated data for any given transmission from Customer. Bank will use commercially reasonable efforts to present Items or corresponding Electronic Item to the applicable Endpoint within a reasonable period of time following such receipt.

**9.3.** If the digitized images are not complete, are not useable, are illegible or do not adhere to Bank's data specifications, the images may not be processed by Bank, and Customer's deposit will be adjusted and notification will be promptly provided to Customer. Customer may then submit the original voided Item for processing or contact the maker to reissue the Item. Bank may change the method of notification as described in this Agreement, including use of Internet sites to be checked by Customer.

**9.4.** It is Customer's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet the availability schedules of Bank. Customer is further responsible for understanding and building into its transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

- 10. Security Procedures.** Customer will be solely responsible for establishing, maintaining and following such security protocols as it deems necessary to ensure that output files transmitted directly to Bank are intact, secure and confidential until received by Bank. In addition to the Customer's security protocols, Customer agrees to implement security procedures that Bank may offer to verify the authenticity of any output files transmitted to Bank in the name of Customer. If Bank verifies the authenticity of an output file using security procedures chosen by Customer, then Customer agrees that Bank may rely on and Customer will be obligated on the output file, whether or not the output file was authorized by Customer. Also, if an output file was authorized by Customer, Customer will be obligated on the output file. Customer agrees that the security procedures are intended to verify authenticity and not to detect error.

- 11. Customer Representations and Warranties.** Customer makes the following representations and warranties with respect to each Item processed by Customer pursuant to this Agreement (and, if applicable, any corresponding Electronic Item):

**11.1.** The Electronic Item is a digitized image of the front and back of the Item and accurately represents all of the information on the front and back of the Item as of the time Customer converted the Item to an Electronic Item;

**11.2.** The Electronic Item contains all endorsements applied by parties that previously handled the Item in any form for forward collection or return; and

**11.3.** All encoding, transfer, presentment and other warranties made under applicable law as Bank is deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network.

11.4. There will be no duplicate presentment of an Item as a digitized image, as a paper negotiable instrument or otherwise and Customer assumes responsibility for any such duplicate presentment of any Item.

12. **Fees.** Customer will pay to Bank the initial setup and on-going service fees listed in Exhibit B attached. Fees may, at Bank's option, be billed and paid through Bank's account analysis system.

13. **Term and Termination.**

13.1. The term of this Agreement will commence upon full execution of this Agreement and will continue thereafter for five (5) years, or until terminated as follows, whichever is earlier:

13.1.1. Customer may terminate this Agreement at any time, with or without cause, upon 30 days prior written notice to Bank; (Customer's termination notice period shall be shortened to 25 days if the termination is made in response to a Bank initiated unilateral change in the terms of this agreement or additions to the terms of service made); and

13.1.2. Bank may terminate this Agreement on 5 days written notice to Customer in the case of cause, e.g., fraud or duplicate presentment, and on 30 days prior written notice to Customer for any other reason.

13.2. Any termination will not affect any obligations arising prior to termination, such as the obligation to process any Items or corresponding Electronic Items, that were processed or in the process of being transmitted or collected prior to the termination date, or any returns of the same. Upon termination, Bank may terminate Customer's access to the Product and Services, and Customer will terminate its access to and use of the Product and Services, except to the extent necessary to process and collect Electronic Items that were in process prior to the termination date. Within 30 days after termination of this Agreement, Customer will, at its expense, return to Bank all hardware and equipment provided by Bank for the Service, including scanner, the Documentation and any materials relating to the Documentation in its possession or under its control, destroy all copies of the Documentation and materials relating to the Documentation that cannot be returned, and certify in writing to Bank that all copies have been returned or destroyed. Customer will be responsible and liable to Bank for all lost, stolen or damaged equipment that was provided by Bank to Customer in connection with the Service. Customer agrees not to develop a product or service substantially similar to the Product and Services within 3 years after termination of this Agreement.

13.3. All Sections of this Agreement which are intended by their terms to survive termination of this Agreement, including without limitation Sections 7 through 12, will survive any such termination.

14. **Customer Indemnification.** Customer will indemnify and hold harmless Bank, its licensors and providers of the Product and Services, and their respective directors, officers, shareholders, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) the wrongful acts or omissions of Customer, or any person acting on Customer's behalf (including without limitation Customer's Authorized Processor, if any), in connection with Customer's use of the Product or Services or processing of Items under this Agreement, including without limitation (a) the breach by Customer of any provision, representation or warranty of this Agreement, (b) the negligence or willful misconduct (whether by act or omission) of Customer or its Customers or any third party on behalf of Customer, (c) any misuse of the Product or Services by Customer, or any third party within the control or on behalf of Customer, (d) the failure by Customer to comply with applicable state and federal laws and regulations, or (e) any fine, penalty or sanction imposed on Bank by, any clearing house, or any governmental entity, arising out of or connected with any Item (or any corresponding Electronic Item) processed by Bank for Customer or at Customer's instruction (except for a fine, penalty, or cost imposed that was caused by the Bank); (ii) any act or omission of Bank that is in accordance with this Agreement or instructions from Customer (except for a fine, penalty, or cost imposed on the Bank for a Bank action that the Bank knew or should have known would draw a fine, penalty, or cost); (iii) actions by city or its agents,

such as the introduction of a virus that delay, alter or corrupt the transmission of an Electronic Item to Bank; (iv) any loss or corruption of data in transit from Customer or its Authorized Processor to Bank; (v) any claim by any recipient of a Substitute Check corresponding to an Item processed by Customer (or its Authorized Processor, if any) under this Agreement, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check; or (vi) any claims, loss or damage resulting from Customer's breach of, or failure to perform in accordance with, the terms of this Agreement.

15. **Bank Indemnification.** To the extent Bank's liabilities are insured or bonded as provided in paragraph 15.1 of this Agreement, Bank will indemnify and hold harmless Customer, and its elected and appointed directors, officers, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) the wrongful acts or omissions of Bank, or any person acting on Bank's behalf, in connection with Bank's provision of the Product or Services or processing of Items under this Agreement, including without limitation (a) the breach by Bank of any provision, representation or warranty of this Agreement, (b) the negligence or willful misconduct (whether by act or omission) of Bank or any third party on behalf of Bank, (c) any misuse of the Product or Services by Bank, or any third party within the control or on behalf of Bank, (d) the failure by Bank to comply with applicable state and federal laws and regulations, or (e) any act or omission of Customer that is in accordance with instructions from Bank; (f) any loss or corruption of data while under Bank or its agent's control; or (g) any claims, loss or damage resulting from Bank's breach of, or failure to perform in accordance with, the terms of this Agreement. For liabilities that are required to be insured or bonded by paragraph 15.1 of this agreement, and are in fact so insured or bonded,, Bank's Indemnity obligations shall be limited to the value of the required Insurance or Bonding.

15.1. **Insurance:** At a minimum, Bank shall at all times during the life of this agreement, maintain the insurance and bonding requirements attached as Exhibit C.

16. **Disclaimer.** BANK'S REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND LIABILITIES, AND CUSTOMER'S RIGHTS AND REMEDIES, SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. BANK AND ITS LICENSORS HEREBY DISCLAIM, AND CUSTOMER HEREBY WAIVES AND RELEASES BANK, ITS LICENSORS AND THEIR RESPECTIVE OWNERS, OFFICERS AND EMPLOYEES FROM ALL OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY AND ALL DOCUMENTS, SERVICES, INFORMATION, ASSISTANCE, SOFTWARE PRODUCTS, OR OTHER MATTERS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION (i) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A SPECIFIC USE, PURPOSE OR APPLICATION, OR OTHER IMPLIED CONTRACTUAL WARRANTY; (ii) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (iii) ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND (iv) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR. NOTWITHSTANDING THE GENERALITY OF THE FOREGOING, NEITHER BANK NOR ITS LICENSORS WARRANT THAT OPERATION OF THE PRODUCT WILL BE ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED.

17. **Bank's Liability.**

17.1. Bank will not be liable to Customer for any of the following: (i) any damages, costs or other consequences caused by or related to Bank's actions that are based on information or instructions that Customer provides to Bank; (ii) any unauthorized actions initiated or caused by Customer or its employees or agents; (iii) the failure of third persons or vendors to perform satisfactorily, other than persons to whom Bank has delegated the performance of specific obligations provided in this Agreement; (iv) any refusal of a Payor Financial Institution to pay an Electronic Item or Substitute Check for any reason (other than the breach of contract, negligence or willful misconduct of Bank), including without limitation, that the Item, Electronic Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (v) any other party's lack of access to the Internet or inability to transmit or receive data;

(vi) failures or errors on the part of Internet service providers, telecommunications providers or any third party's own internal systems, or (vii) any of the matters described in Section 11 above.

**17.2.** Except as otherwise specifically provided in this Agreement, in no event will either party be liable to the other for any consequential, indirect, incidental, special, exemplary or punitive damages, including without limitation any loss of use or loss of business, revenue, profits, opportunity or good will, under any theory of tort, contract, indemnity, warranty, strict liability or negligence, even if such party has been advised or should have known of the possibility of such damages.

**17.3.** Customer and Bank acknowledge and agree that the limitations of liability in this Section are a bargained for allocation of risk and liability, and agree to respect such allocation of risk and liability. Each party agrees and acknowledges that the other party would not enter into this Agreement without the limitations of liability set forth in this Section.

## **18. MISCELLANEOUS.**

**18.1. Assignment.** Neither party may assign its rights or obligations under this Agreement without the written consent of the other party; provided, however, Bank may assign or transfer this Agreement, by operation of law or otherwise, to any person that becomes the successor entity of Bank, in connection with a change of control (which shall include a direct or indirect transfer of all or substantially all of Bank's stock or assets to a third party, a merger, reorganization or other such transaction, or any such transaction by a parent corporation of Bank) and Customer hereby consents to such assignment or transfer in advance. The legal successor(s) resulting from such aforementioned assignment or transfer will succeed to and be bound by this Agreement. Bank may subcontract any of the work, services, or other performance required of Bank under this contract without the consent of Customer. In the event of a change in service provider pursuant to this paragraph, City may immediately terminate agreement.

**18.2. Consent to Breach Not Waived.** Neither party will, by the lapse of time, and without giving written notice, be deemed to have waived any of its rights under this Agreement. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.

**18.3. Notices.** Notices must be in writing, must be delivered according to clause (a), (b) or (c) below, and must be delivered to the address set forth on the signature page of this Agreement, or to such other address as a party may designate by notice in accordance with this provision. All notices under this Agreement will be deemed given on the date of (a) sending by regular U.S. mail, (b) delivery by a nationally recognized overnight courier, or (b) delivery by certified mail, return receipt requested.

**18.4. Force Majeure.** Neither party will be liable to the other for any delay or interruption in performance as to any obligation in this Agreement resulting from governmental emergency orders, judicial or governmental action, emergency regulations, sabotage, riots, terrorist action, vandalism, labor strikes or disputes, acts of God, fires, electrical failure, major computer hardware or software failures, equipment delivery delays, acts of third parties, or delays or interruptions in performance beyond its reasonable control.

**18.5. Entire Agreement: Amendment.** Bank and Customer may amend this Agreement only by written amendment signed by both parties. This Agreement will not be more strongly construed against either party, regardless of who is more responsible for its preparation.

**18.6. Severability.** If any part of this Agreement is found to be illegal or unenforceable, then that part will be curtailed only to the extent necessary to make it, and the remainder of the Agreement, legal and enforceable.

**18.7. Applicable Law.** This Agreement will be governed by federal law, and to the extent not preempted, by internal laws of the State of California (without regard to that state's principles of conflicts of law).

**18.8. Independent Contractor.** Nothing in this Agreement creates a joint venture, partnership, principal agent or mutual agency relationship between the parties. No party has any right or power under this Agreement to create any obligation, expressed or implied, on behalf of the other party.

[signature page on following page]

**18.9. Headings.** The titles or captions used in this Agreement are for convenience only and will not be used to construe or interpret any provision hereof.

EXECUTED as of the last date indicated below.

FARMERS & MERCHANTS BANK OF CENTRAL CALIFORNIA	CUSTOMER:
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
	Address: _____ _____ _____
	Phone: _____
	Fax: _____





## **EXHIBIT A**

### **DEFINITIONS**

"ACH" means Automated Clearing House.

"Business Days" has the same meaning as "business day" under Regulation CC and means a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

"Confidential Information with respect to either party as recipient" means any information obtained by, or disclosed or made available to such party (whether in writing, verbally or by observation of objects or processes) from or by the other party, that is accompanied by a clear indication that the disclosing party considers the information to be confidential or proprietary, or is of a type that the recipient should reasonably consider it the confidential or proprietary information of the disclosing party or its licensors. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by the recipient; (ii) was in the recipient's possession before the time of disclosure, (iii) becomes available to the recipient on a non-confidential basis from another source, provided that the recipient has no actual knowledge that the source of such information was bound by and in breach of a confidentiality obligation with respect to such information; or (iv) is independently developed by the recipient without reference to or use of the disclosing party's other Confidential Information. The Documentation and any materials relating to the Documentation will be deemed the Confidential Information of Bank for purposes of this Agreement. Any nonpublic personal information regarding Customer's Customers shall be deemed the Confidential Information of Customer for purposes of this Agreement.

"Documentation" means all documentation, the user manual, any other manuals, all instructions (including on-line instructions) relating to the Product and Services which Bank may provide to Customer from time-to-time in connection with the Product or Services.

"Electronic Item" means a digitized image of an Item and any Image Exchange Item or other electronic data arising from an Item.

"Endpoint" means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.

"Image Exchange Item" means a digitized image of an Item cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check.

"Item" means a draft that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to Customer, and includes Original Checks and Substitute Checks. Such term does not include Noncash Items or Items payable in a medium other than United States money.

"Noncash Item" means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.

"Original Check" means the first paper Item issued with respect to a particular payment transaction.

"Payor Financial Institution" means the United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item.

"Product" means collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Items, and includes without limitation the Services.

"Regulation CC" means 12 C.F.R. Part 229, as it may be amended from time to time.

"Services" means the services described in this Agreement, to be provided by Bank to Customer to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints.

"Software" means any software which may be offered or required by Bank for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Bank for additional processing.

"Substitute Check" means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.

"UCC" means the Uniform Commercial Code as enacted and amended in the state whose law governs interpretation of this Agreement.

"United States Financial Institution" means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.

**EXHIBIT B  
FEES**

**REMOTE DEPOSIT CAPTURE**

<b>Service Provided</b>	<b>Unit Price</b>
Monthly Maintenance	\$50.00
CAR/LAR Item Processing	\$0.03
Check 21 Items Processed	WAIVED
Remote Deposit Corrections	\$0.08
Remote Deposit MICR Repair	\$0.08
Terminal Option Epson One Capture 30dpm*	WAIVED

\* Bank shall provide six (6) terminals at no cost to the City

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

**Farmers & Merchants Bank**  
**Financial Institution Coverages**  
**May 17, 2011**

	<b>Limit</b>	<b>Retentions</b>	
<b>Directors &amp; Officers Liability</b>			
Each Policy Year Limit of Liability	\$10,000,000		
Each D&O:	Included	\$0	
All D&O's:	Included	\$0	
Company Liability	Broad Form Company Liab		
Corporate Reimbursement:		\$150,000	
Broad Form Company Liability Coverage			<b>Separate</b>
Each Policy Year Limit of Liability	\$10,000,000	\$150,000	<b>Limit</b>
3rd Party Liability	Included		
Depositor Liability (E&O)	Included		
<b>Fiduciary Liability Coverage</b>			<b>Separate</b>
Each Policy Year Limit of Liability	\$10,000,000	\$5,000	<b>Limit</b>
<b>Insurance Services Liability</b>			
Each Policy Year Limit of Liability	No Coverage		
<b>Brokerage/Advisory Services Liability</b>			
Each Policy Year Limit of Liability	\$10,000,000	\$150,000	Sublimit
<b>Employment Practices Liability</b>			
Each Policy Year Limit of Liability	\$5,000,000	\$100,000	Separate
3rd Party Liability	Included		
<b>Combination Safe Depository Policy</b>			
Liability & Property Coverage Including Money			Sublimit
<b>Internet Banking Liability</b>			
Basic Internet Banking Liability	\$5,000,000	\$100,000	
Social Networking	\$1,000,000	\$100,000	
Correction Expense	\$25,000	\$5,000	
<b>Optional Coverage</b>			
Business Interruption	\$500/hour	24 hr retention	

	\$500,000	Aggregate
Liability Mitigation Expense	\$100,000	\$50,000
<b>Financial Institution Bond</b>		
Fidelity with EDP (includes Trading Loss)	\$10,000,000	\$150,000
On Premises	\$10,000,000	\$150,000
In Transit	\$10,000,000	\$150,000
Counterfeit Money	\$10,000,000	\$150,000
Forgery or Alteration (incl Counterfeit Check)	\$10,000,000	\$150,000
Unauthorized Signature	\$10,000,000	\$150,000
Electronic/Computer Systems	\$10,000,000	\$150,000
Securities with Loan Participation	\$10,000,000	\$150,000
Extortion - Persons & Property	\$5,000,000	\$25,000
Fraudulent Mortgages	\$10,000,000	\$150,000
On/Off Premises ATM	\$125,000	\$5,000
Servicing Contractors	\$5,000,000	\$100,000
Money Order Issuers	\$500,000	\$100,000
Check Kiting Fraud	\$250,000	\$35,000
Stop Payment Legal Liability	\$500,000	\$5,000
Transit Cash Letter	\$500,000	\$0
Safe Deposit Box - Liability & Property w/Money	\$5,000,000	\$0
Audit Expense	\$25,000	\$0
Claims Expense	\$10,000	\$0
Court Costs and Attorney's Fees	\$10,000,000	\$150,000
Indemnity for Directors and Officers	\$2,500	\$0
Reward Payment	\$2,500	\$0
<b>Excess Liability - \$5m xs \$10m</b>		
Excess Liability over D&O, Broad Form Company		
Liability and Fiduciary Coverages	\$5,000,000	

RESOLUTION NO. 2011-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING  
THE CITY MANAGER AND TREASURER TO EXECUTE AGREEMENTS  
FOR REMIT PLUS SOFTWARE, MERCHANT CARD SERVICES  
AND REMOTE DEPOSIT SERVICES WITH JACK HENRY AND  
ASSOCIATES, INC, ELAVON, INC AND FARMERS & MERCHANTS  
BANK OF CENTRAL CALIFORNIA, AND DIRECTING THE  
CITY MANAGER AND TREASURER TO NEGOTIATE A BANKING  
SERVICES AGREEMENT WITH FARMERS & MERCHANTS BANK

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WHEREAS, City desires to purchase Remit Plus software through Jack Henry and Associates, Inc to operate and manage its remittance processing function; and

WHEREAS, City desires to contract with Elavon, Inc. to process debit and credit card transactions at multiple City facilities, and

WHEREAS, City desires to contract with Farmers & Merchants Bank of Central California for Remote Deposit Services at multiple City facilities, and

WHEREAS, all vendors have submitted proposals that meet City's needs and are cost effective, and

WHEREAS, City desires to formalize its banking services with an agreement with Farmers & Merchants Bank based upon the following basic terms:

- Five year term, with option to extend for up to two years,
- Fixed pricing for the term of the agreement,
- Basic banking service to include, but not be limited to, deposit processing, electronic fund transfers, direct deposit, positive pay services, account reconciliation and appropriate collateralization, and
- Earnings credit rate of at least 0.75%
- Clearly defined reserve requirements, exposure limitations and security interest levels
- Liability commensurate with exposure.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby authorize the City Manager and Treasurer to execute agreements for Remit Plus software, Merchant Card services and Remote Deposit services with Jack Henry and Associates, Inc., Elavon, Inc. and Farmers & Merchants Bank of Central California, respectively.

FURTHER, BE IT RESOLVED that the City Council of the City of Lodi directs the City Manager and Treasurer to negotiate a banking services contract with Farmers & Merchants Bank based upon the basic terms noted above.

Dated: November 16, 2011

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I hereby certify that Resolution No. 2011-\_\_\_\_\_as passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2011, by the following votes:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2011-\_\_\_\_\_